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EXAMINING THE STREAM PROTECTION RULE

Tuesday, December 8, 2015

House of Representatives,

Subcommittee on the Interior,

joint with the

Subcommittee on Health Care, Benefits, and

Administrative Rules,

Committee on Oversight and Government Reform,

Washington, D.C.

The subcommittees met, pursuant to call, at 2:32 p.m., in Room 2154, Rayburn House Office Building, Hon. Cynthia M. Lummis [chairman of the Subcommittee on the Interior] presiding.

Present from the Subcommittee on the Interior: Representatives Lummis, Gosar, Buck, Palmer, Lawrence, Cartwright, and Plaskett.

Present from the Subcommittee on Health Care, Benefits, and Administrative Rules: Representatives Jordan, Walberg, Lummis, Meadows, Mulvaney, Hice, Carter, Cartwright, Norton, and Lujan Grisham.

Also Present: Representative Johnson of Ohio.

Mrs. Lummis. Well, we are going to start. There is a series of procedural votes that were unanticipated that are going on on the floor of the House this afternoon. We've decided not to let them interfere with our hearing, so I'm going to gavel in.

I would ask members to take turns leaving and coming back. If you can't come back because you a markup in another committee, please let us know so we don't drain ourselves of attendees.

And we will now begin. So thank you for joining Chairman Jordan and me for this joint hearing by the Subcommittee on Interior and the Subcommittee on Health Care, Benefits, and Administrative Rules. Today, we'll review the Department of the Interior's Office of Surface Mining proposed stream protection rule.

The proposed rule was published in the Federal Register in July following years of back-and-forth following a previous version of the rule that was finalized in 2008 and which was struck down by the courts. To date, the administration has spent several million dollars to revise regulations under the Surface Mining Control and Reclamation Act that govern coal mining.

The proposed regulations originally were to reduce the harmful environmental consequences of surface coal mining operations in Appalachia. Since then, they have been expanded in scope to include operations nationwide in both surface and

underground coal mining.

OSM entered into memorandums of understanding with multiple States in 2010 to become cooperating State agencies in preparing a draft environmental impact statement under the NEPA process for the proposed rule.

OSM allowed reviews of those proposed documents in 2010 and then shut out the States -- this in spite of a public guarantee by then-Interior Secretary Salazar that all States would have an opportunity to review and comment before the draft EIS was published. My home State of Wyoming was one of the few States that did not throw up their hands in response to the way they were being treated.

This failure calls into question whether OSM properly followed administrative procedures in drafting the rule. Further questions have been raised regarding the regulatory analysis underpinning the rule.

J. Steven Gardner, president of the Society for Mining Metallurgy and Exploration, was part of a team put together by OSM to write the environmental impact statement and the regulatory impact analysis. When his team predicted thousands of job losses as the impact of the proposed rule in 2010, he states OSM pressured his team to change the numbers. When he refused, his contract was terminated.

A subsequent RIA produced this year for OSM found less than 300 jobs lost and with those mostly offset by jobs related to

compliance with the proposed rule, while an assessment produced by the National Mining Association predicted between 55,000 and 79,000 coal mining jobs lost. That's quite a range.

The Assistant Secretary for Land and Minerals Management, Janice Schneider, is before the committee.

And I appreciate your willingness to work with us, as we've had to repeatedly reschedule this hearing. And today we're going to have some interruptions, so I am grateful that you are here and willing to tolerate some of these interruptions. I really do look forward to hearing from you and the other members as we try to clarify what's going on here.

We are in order. We now will recognize the ranking member.

And I will let you know that, without objection, the chair is authorized to declare a recess at any time, although we hope to rotate in and out as these procedural votes continue.

The chair now recognizes the ranking member, Mrs. Lawrence.

[Prepared statement of Mrs. Lummis follows:]

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Mrs. Lawrence. Thank you, Madam Chairwoman. And thank you so much for holding this hearing.

The proposed stream protection rule was drafted to preserve clean water and a healthy environment. This new rule is necessary because existing rules do not offer enough protection to communities from the pollution and long-term environmental damage caused by the coal mining waste.

Mountaintop removal mining has caused serious and permanent harm to the environment. Hundreds of miles of streams have been destroyed by mine waste. Toxic chemicals from mine waste harm fish and other aquatic life. Humans and animals that consume fish from streams contaminated by mine waste are also harmed. Recent scientific studies have strongly associated high disease and mortality rates for residents in nearby communities with the harmful effects of mining practices.

Current rules to protect streams from the harmful effects of mountaintop removal mining are over 30 years old. These rules were not developed with the science we have available today and have not prevented serious or persistent environmental harm.

The new rule will accomplish a number of objectives, including increasing the monitoring of water quality during mining operations and afterwards, requiring mine operators to restore streams damaged by mining practices, and requiring financial assurance that long-term pollution discharges will be treated.

This last point is important because current rules do not address this huge problem. Mining companies have simply walked away from the pollution they created without any financial liability to clean up the mess.

Opponents of this commonsense rule express concerns about loss of jobs and other economic impacts. But, according to experts and testimony received today, the new rule will create as many jobs as those that are numbered lost. The net effect on jobs will be zero.

The importance of clean water cannot be overstated. The survival of our planet depends on water -- and I will say clean water. I wholly support the stream protection rule as one of the measures to maintain clean water and protect our environment.

I want to thank you so much, Ms. Schneider, for participating today and providing information about this matter.

Thank you, Madam Chair, and I yield back my time.

[Prepared statement of Mrs. Lawrence follows:]

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Mrs. Lummis. I thank the gentlelady.

The chair now recognizes Mr. Jordan, chairman of the Subcommittee on Health Care, Benefits, and Administrative Rules.

Mr. Jordan. I thank the chairman for having this important hearing. I would yield back in an effort to get to Ms. Schneider's testimony so we can go vote and then come back and ask questions, if that's okay with the chair.

[Prepared statement of Mr. Jordan follows:]

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Mrs. Lummis. Thank you, Mr. Chairman.

And, Mr. Cartwright, the ranking member of the Subcommittee on Health Care, Benefits, and Administrative Rules, will be recognized if he is able to attend the meeting this afternoon.

I will hold the record open for 5 legislative days for any member who would like to submit a written statement.

[The information follows:]

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Mrs. Lummis. And we will now recognize our distinguished witness. I'm pleased to welcome Ms. Janet Schneider, Assistant Secretary for Lands and Mineral Management at the U.S. Department of the Interior.

Welcome, Ms. Schneider.

Pursuant to committee rules, witnesses are sworn in before they testify, so please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record reflect that the witness answered in the affirmative.

Thank you. Please be seated.

In order to allow time for discussion and questions, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record.

You may begin. You are recognized for 5 minutes.

STATEMENT OF THE HON. JANICE SCHNEIDER, ASSISTANT  
SECRETARY FOR LAND AND MINERALS MANAGEMENT, U.S.  
DEPARTMENT OF THE INTERIOR

Ms. Schneider. Thank you very much.

Chairman Lummis, Chairman Jordan, and members of subcommittees, thank you for the opportunity to testify on the proposed stream protection rule.

The proposed stream protection rule includes reasonable and straightforward reforms to revise 30-year-old regulations for coal mining. The proposed rule recognizes, as the Energy Information Administration does in its forecast, that coal mining and coal-fired electricity production will be a part of our energy mix for decades to come. And so the proposed rule is designed to keep pace with current science, technology, and modern mining practices while also safeguarding communities from the long-term effects of pollution and environmental degradation that endanger public health and undermine future economic opportunities.

Every reclamation practice contained in the proposed rule has been successfully implemented by a mine operator somewhere in the country. Through this proposed rule, we are leveraging innovations of the industry by adopting best practices developed over the last 30 years to improve the regulations.

I would like to stress that this is a proposed rule. It has

been available for public review and comment for close to 3 1/2 months, including one extension of the comment period that was already granted. We have actively sought public comment in some of the most impacted areas of the country, including to hold six public hearings in September.

To date, there have been about roughly 94,000 comments received on the proposed rule. We are evaluating all of the comments received in detail in developing a final rule and are meeting with all State regulatory authorities who wish to further discuss their submitted comments.

In 1977, Congress enacted SMCRA, which established a program to regulate coal mining. Over the years, OSMRE has adopted four different sets of regulations on the topic we are discussing today, most recently in 2008. Last year, however, a Federal district court vacated the 2008 rule due to Endangered Species Act violations and ordered reinstatement of the 1983 version of the stream buffer zone rule. That rule was adopted over 30 years ago and is the base for State programs today.

We've learned great deal over the last three decades about the impacts of coal mining operations and how to prevent it. We believe that the proposed rule strikes an appropriate balance between environmental protection, agricultural productivity, and the Nation's need for coal as an essential source of energy while providing greater regulatory certainty for the mining industry.

OSMRE's analysis and outreach to stakeholders identified seven key areas for improvement to uphold the obligations of SMCRA. The time allotted does not allow for me to elaborate on all of these key areas, but they are described in my written statement submitted for the record.

I would like to highlight the key aspects of the proposed revisions. They include a better understanding of baseline conditions at mining sites, improved monitoring, clarity on what constitutes material damage to the hydrologic balance outside of the permit area, and enhanced materials handling and restoration requirements designed to take into advances in technology, information, science, and methodologies over the last 30 years.

We've used a highly experienced team to develop the draft regulatory impact analysis for the proposed rule. Among the many benefits, the draft RIA estimates that for the period from 2020 to 2040 thousands of miles of streams will be in better condition if the proposed rule is adopted and nearly 60,000 acres would be forested or reforested in an approved manner.

Consistent with EIA forecasts, the draft RIA finds that, while coal will be a part of our energy mix well into the future, coal production is expected to decline even under existing regulations. This is being driven by market conditions, including the low price of natural gas, and fuel switching by utilities, which are, in and of themselves, anticipated to result

in a further decline in demand for coal and reduced annual coal production of approximately 15 percent.

The draft RIA estimates that, over the same period, the proposed rule's economic effects are minimal. Annual coal production is anticipated to be reduced by only 0.2 percent, and coal-production-related job losses will be largely offset by increases in compliance-related jobs, so essentially a wash.

The draft RIA also estimates that industry compliance costs are small, as is the rule's impact on electricity production costs for utilities at 0.1 percent.

Thank you for the opportunity to appear before the subcommittees today to testify about the proposed stream protection rule. The proposed rule reflects what Americans expect from their government -- a modern and balanced approach to energy development that safeguards our environment, protects water quality, supports the energy needs of the Nation, and makes coalfield communities more resilient for a diversified economic future for generations to come.

I would be happy to answer your questions.

[Prepared statement of Ms. Schneider follows:]

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Mrs. Lummis. I thank the witness.

And we have been joined by the ranking member of the Subcommittee on Health.

Do you wish to make an opening statement, Mr. Cartwright?

Mr. Cartwright. I do.

Mrs. Lummis. You are recognized for 5 minutes.

Mr. Cartwright. Thank you, Chairman Lummis.

And welcome, Assistant Secretary Schneider. I appreciate your being here. I appreciate your testimony, and I look forward to the question period too.

I come from a district in northeastern Pennsylvania, where we know a lot about coal mining. Coal brought jobs, prosperity, and economic development to northeastern Pennsylvania. Unfortunately, coal also left us a legacy of environmental catastrophe that we continue to struggle with even to this day.

We've learned lessons about the dangers and costs of irresponsible mining practices in my district, and they inform the discussion that we have here today. My district is littered with coal refuse piles, most of which are decades or more old that every day poison local streams and rivers. We have mines that have been abandoned for generations that pollute streams and create hazardous conditions for my constituents.

Coal runoff from these mines affects families, communities, and entire regions in Pennsylvania. And the companies that profited from the mining and created these messes are largely

no longer around. And what that means is the public is bearing the burden, and it's slowing paying to clean up this environmental catastrophe.

It pains me to see the same mistake being made with the streams and mountains of Appalachia. Once again, mining companies are destroying the environment. We'll leave it to future generations of taxpayers to pick up the pieces.

Now, critics of the stream protection rule have called it Federal overreach, of course, but what this rule does is it provides basic standards to ensure we don't continue to destroy hundreds of mountains and thousands of miles of streams and rivers, which our children and our grandchildren will be left to clean.

Despite the majority's claims to the contrary, this is not a war on coal. These regulations are long overdue. Some parts of SMCRA are over 30 years old. And we owe it to our constituents and our children to make sure that surface mining is done in a way that is safe and environmentally responsible. Mountaintop removal mining in Appalachia is already responsible for the destruction of over 500 mountains and approximately 2,000 miles of stream channels, and we need to fix the problem.

If anything, these regulations do not go far enough. While the proposal does improve the baseline data collection, enhance monitoring and bonding requirements, and restore stream functions, it falls short in other areas. And, in particular,



I hope OSM will look at the many comments that have been submitted and strengthen the stream buffer rule.

Now, OSM projects that the rule will improve water quality, forest and biological resources, recreational opportunities, while increasing carbon storage and reducing carbon emissions. And, according to OSM's calculations, all of these benefits will come at a net loss of a mere 10 total jobs.

I am interested in hearing more from you, Ms. Schneider, about how OSM came to calculate the net loss of 10 jobs and how the offset of regulatory compliance jobs makes that up.

Now, this rule is about taking reasonable steps to protect our environment and not pillaging the land in the quest for the cheapest solution possible while leaving our children and grandchildren to clean up the mess.

I thank the chairman again.

I commend the Office of Surface Mining for its progress, and I look forward to hearing more details about this important rulemaking from you, Assistant Secretary Schneider.

Thank you, Mr. Chairman. I yield back.

[Prepared statement of Mr. Cartwright follows:]

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Mr. Meadows. [Presiding.] I thank the gentleman for his comments and certainly for his eloquent remarks.

I'm going to go ahead and recognize myself. We're trying to keep this going while -- I won't say "your side" but somebody is trying to adjourn the events. But I know it's not the gentleman from Pennsylvania. So we're going to try to keep this moving. I'll go ahead and recognize myself for 5 minutes for a series of questions.

So, Ms. Schneider, help me understand a little bit the process. What I've been informed with is that this whole rulemaking process actually didn't really involve stakeholders, as has been, I guess, intimated, and then we have one public hearing -- is that correct? Was it one public hearing?

Ms. Schneider. No. The process has been, actually, quite extensive. And one of the reasons it's taken as long as it's taken is a real effort to try to engage a broad range of stakeholders.

Mr. Meadows. All right. So why did the eight States eliminate themselves? I guess you're down to two States now from a NEPA standpoint. Why did they get out?

Ms. Schneider. I can't really speak to why they terminated --

Mr. Meadows. Why do you think they got out?

Ms. Schneider. What they have said to us is that they had some concerns about the process. They wanted to be more engaged --

Mr. Meadows. So did you address those concerns?

Ms. Schneider. Yes, I think we are. What we did back in 2010 --

Mr. Meadows. You are, or you have?

Ms. Schneider. Both. And, if I may, sir --

Mr. Meadows. Okay. Go ahead.

Ms. Schneider. -- back in 2010 and 2011, as I've been advised -- and I was not at the Department for most of the period involved, but I've been advised that OSMRE provided chapters of the administrative draft of the EIS to the State regulatory authorities. As cooperating agencies, the States had the opportunity to provide comments. They did provide comments. We used those comments in developing the draft environmental impact statement that is out on the streets.

And, through the course of this, we issued an advance notice of proposed rulemaking and a scoping process. We got over 50,000 comments on that --

Mr. Meadows. Well, I know how that works. I've been involved in that, Ms. Schneider. I mean, I know, I mean, that goes out; you get tons of the comments from the Sierra Club and others. I mean, you know, the stacks are voluminous. But when it really comes to stakeholders that have a stake in it, so to speak -- and I know you view them equally.

So how many days did you give the States to respond, to review this?

Ms. Schneider. I was not at the Department, so I --

Mr. Meadows. But, I mean, obviously, you prepared for this hearing. So how many days were given?

Ms. Schneider. Sir, I actually don't have that information.

Mr. Meadows. Does your counsel behind you have it?

Ms. Schneider. I don't believe so. They're not counsel.

But what I can tell you is what we're doing on a going-forward basis. I set up --

Mr. Meadows. All right. Did you incorporate their comments in the EIS?

Ms. Schneider. Yes, we did.

Mr. Meadows. All of them? That's your testimony?

Ms. Schneider. Sir, my understanding, what I've been advised by OSMRE is that the comments that were provided by the State regulatory authorities were incorporated into the new draft document.

All of the States have an opportunity and many have submitted comments on that document. We are now in a process of a series of meetings with all of those State regulatory authorities to walk through their comments to make sure that we understand them. We've got at least 14 meetings that have either we've already started or are being scheduled. We are looking to schedule more.

So I would say that, since I have been in this job, we are making a very concerted effort to engage what I agree are very important stakeholders in this effort. And I am committed to making sure that we understand the State perspectives on it.

Mr. Meadows. So tell me about the public hearing in Baltimore then. I mean, why do you have a public hearing in Baltimore? I guess that's a hotbed of surface mining?

Ms. Schneider. We did not have a public hearing in Baltimore, to my knowledge. We did meet with the State regulatory authorities at the IMCC meeting in Baltimore before the draft --

Mr. Meadows. That's what I'm referring to. I mean, so you have it there. Why do you pick Baltimore?

Ms. Schneider. Well, the IMCC picked Baltimore. And it was, as I understand it, one of their regular meetings. Because most of the State regulatory authorities were in Baltimore for that meeting, we wanted to facilitate their participation in these discussions, and so we had a meeting --

Mr. Meadows. So would you say that that participation was robust there in Baltimore?

Ms. Schneider. I did not attend that meeting. What was communicated to me was that there was robust participation by the State regulatory --

Mr. Meadows. And so do you think it would be fair to characterize that all 10 of the States would be supportive of this rule and that they are happy with the process?

Ms. Schneider. I would be reluctant to characterize anyone else's position on the rule.

Mr. Meadows. Well, then why are we here today, I guess? I mean, you have to characterize something.

Ms. Schneider. Yes.

Mr. Meadows. And so let me just suggest --

Ms. Schneider. But here's what I will say. I mean, we've got meetings set up. I've had several meetings with Wyoming already. We've done meetings with Ohio, with Maryland, with Oklahoma, with Indiana, with Pennsylvania. We've got meetings scheduled for -- well, we had one with Virginia -- scheduled for Illinois, North Dakota, Utah, Montana. We're working through trying to get another meeting up in Fargo with North Dakota. We're working on trying to get a meeting with Alaska in Anchorage.

So we are really trying to make sure that we understand and that we hear directly from the State regulatory authorities about what their comments are and concerns are with respect to the rule so that we can make sure that we address those in an adequate way. I feel that's very important to accomplish, and that's why we're going through this process now that I'm in this position.

Mr. Meadows. All right.

Last question, and then I'll go to my good friend,  
Mr. Cartwright.

So when we look at this particular -- he was referring to jobs. And I guess I'm very concerned with the way that we came about the impact on jobs and with private contractors, or the lack thereof, or the changing thereof.

So how confident are you that your projection on job loss gets an A?

Ms. Schneider. I'm actually pretty confident that we've done --

Mr. Meadows. So you've looked at the matrix on that?

Ms. Schneider. I have reviewed the regulatory impact analysis --

Mr. Meadows. No, the matrix of the -- yeah, I guess the matrix of jobs. I mean, when you look at jobs, how do you figure out -- because I talk to all of my coal States, and they say that this will kill them, and yet you're saying, no, it's pretty good.

Ms. Schneider. Right. So let me step back and discuss a little bit about how we handled the regulatory impact analysis, which goes through what the impacts of the proposed rule would be and what the impacts on jobs will be.

It's a very different process from the National Mining Association report. They were two reports, one in 2012 --

Mr. Meadows. So you're saying theirs is not accurate?

Ms. Schneider. I do not believe theirs are accurate. I believe ours is more accurate.

Mr. Meadows. And you base that on what?

Ms. Schneider. I base it on reading their report. And --

Mr. Meadows. So you're the official arbitrator of what creates jobs or not.

Ms. Schneider. No --

Mr. Meadows. I'm a small-business guy, so I find that very fascinating. But you go ahead. So you're the arbitrator of what

creates a job or not.

Ms. Schneider. No, I'm not the arbitrator of that. But when you look at the analysis that was done, the National Mining Association -- I mean, there are a couple of different reports out there. One was a report that they issued in 2012, which was based on a preliminary version of the rule that actually did not reflect the version of the rule that is out on the street. So it's been revised since then. So those jobs --

Mr. Meadows. So how many more jobs did you create with the revision?

Ms. Schneider. If I may, sir?

Mr. Meadows. Yep, you may.

Ms. Schneider. So sometimes you'll hear the 7,000 job-loss number. That's based on the earlier reports that were leaked. We've changed the rule from what was out earlier, so that number is no longer -- or it never was, because it was preliminary -- but no longer a relevant number, from my perspective.

The new National Mining Association job number that the chairman referenced in her opening statement makes some very significantly flawed assumptions. For example, it assumes that there would be no temporary impacts allowed at all with respect to material damage to the hydrologic balance. And it assumes, when you look at it, that it would halt most longwall mining and that it will would strand reserves, and that's simply incorrect.

So when they talk about their job numbers, their job numbers



and the job-loss numbers are based on extremely flawed assumptions. Now, we understand that the way they came to this is through a survey of operators. There are no real metrics that are measurable. You know, it's a very subjective approach. So --

Mr. Meadows. So, since there's no metrics --

Ms. Schneider. So --

Mr. Meadows. I'm going to go ahead and interrupt you because I'm way over time, and the gentleman from Pennsylvania has been gracious, but -- I won't make it up to you, but I will recognize you here in just a second.

But here is my concern in talking to operators. And we're not big coal territory, but we have mines in every single county that I have. If there is a way to deviate in the way that your rulemaking comes at, it is normally implemented in the harshest terms possible with the greatest impact possible. And that comes from the miners who actually do the work. And so, if there is not a good matrix, it becomes very difficult to quantify it.

And, with that, I will recognize the gentleman from Pennsylvania so he can try to rebut everything.

Mr. Cartwright. Thank you, Chairman Meadows.

You know, Assistant Secretary Schneider, I mentioned in my opening statement that I come from northeastern Pennsylvania. If you fly into the Wilkes-Barre/Scranton International Airport and you look out the window as you land, you can see where the Lackawanna River flows into the Susquehanna River. And there's

something there called the Old Forge borehole. And it's mine effluence spilling into the river, Ms. Schneider -- 60 million gallons every day flowing into the river.

And it's so full of oxides, oxides of metals, that it's orange. And from 2,000 feet up, you can see this distinctive orange plume flowing into the Susquehanna River. And you think, my goodness, couldn't we have prevented something like that? And this is in the Chesapeake Bay watershed, so this finds its way into this national treasure we call the Chesapeake Bay.

And, you know, what was it, about a month or 2 months ago, we had the Gold King Mine disaster, where everybody was saying a high state of outrage in this room about spilling 3 million gallons of effluent in Colorado. I repeat myself: It's not 3 million gallons on a one-event basis. It's 60 million gallons a day happening in my district. And you can see it from the air.

So making sure that coal mine operators act responsibly and provide for the future cleanup of what they do is something that strikes very close to my home.

Now, a recent analysis by the Office of Surface Mining found that roughly 41 percent of the outstanding mining permits from West Virginia are held by a company whose parent corporation is now in bankruptcy.

Are you familiar with that statistic?

Ms. Schneider. I'm not familiar with that precise statistic, but I believe I understand where you're going.

Mr. Cartwright. Well, part of what troubles me is that coal company executives are still getting big payouts, and workers and taxpayers are left holding the bag for these cleanup expenses. Wyoming and West Virginia officials are dealing with the issue with Alpha Natural Resources having filed for bankruptcy.

How does this rule, Assistant Secretary Schneider, how does it address the problem of bankrupt coal companies walking away from their obligations and passing off the costs to the taxpayer?

Ms. Schneider. Mr. Cartwright, this proposed rule does not specifically address that specific issue.

The issue that you're referring to is an issue that is of great concern to the Department. It is the issue of self-bonding and the ability of very large companies, if they have the financial wherewithal, to self-bond for their reclamation liability. This is a provision that is included in SMCRA, so it is an authorized portion of the Federal program and it is an authorized portion of many State programs.

We are looking very, very closely at the issue. The situation with the Alpha Resources bankruptcy has raised very significant issues in the State of Wyoming, in particular, as well as in the State of West Virginia. OSMRE has an advisory role with respect to this issue. We stand ready to work with the States to try to address this issue. It is something that is of very serious concern to us but --

Mr. Cartwright. I don't mean to interrupt you, but I want

to move to the next question.

Can you explain how trusts and annuities will take the place of conventional bond instruments to ensure funds are available for mining cleanup whether the company is around or not?

Ms. Schneider. Well, the issue of appropriate financial assurances, at least from my personal perspective, is something we need to look at. We are certainly doing this on the offshore right now, where we have a great deal of liability to the American public with respect to aging oil and gas facilities.

I think if there are ways that we can adequately provide for additional financial assurance in a flexible way that lowers costs for companies, we should be looking for those opportunities. Because I agree with your premise that the American public should not be left holding the bag on this.

Mr. Cartwright. Do you believe that these instruments are sufficient, fully, to fund the restoration that can be necessary after mountaintop removal mining?

Ms. Schneider. It would depend upon the nature of the instrument and the precise terms and what sort of financial backing there would be behind it.

Mr. Cartwright. Okay. I thank you.

And I yield back.

Mrs. Lummis. [Presiding.] The chair recognizes Mr. Walberg for 5 minutes.

Mr. Walberg. I thank the chairman.

And thank you, Ms. Schneider, for being here with us.

What threshold does OSM use in terms of lost jobs and lost coal production before it considers a proposal as not striking the proper balance? You mentioned that, for years to come, coal for energy would be on America's plate. What do you consider there when you look at it?

Ms. Schneider. Well, candidly, there isn't a bright-line test for that. I mean, what we're trying to do in the proposed rule -- and this is actually in direct response to the comments that we got from the State regulatory agencies -- is to look at different areas of the country so that we have an understanding about how the proposed rule would have a potential effect on coal production as well as the jobs that may go along with it.

Mr. Walberg. But no specific approach to that? Is that what I'm hearing, that you don't have a specific threshold that you use in determining lost jobs and lost production?

Ms. Schneider. Well, we do look at those questions, but, you know, we don't say, well, if we lose X number of jobs -- you know, there's not a bright-line litmus test.

Mr. Walberg. So you didn't go out and look for a direct impact?

Ms. Schneider. Oh, we do look for direct impacts, absolutely.

Mr. Walberg. How do you do that?

Ms. Schneider. Well, we're doing it through the regulatory

impact analysis here, and we're doing it through the process that we're undergoing right now.

I mean, again, what we've done is we've put drafts out for stakeholder review. Our expectation is that those interested parties, including the States, will provide additional information for us to consider.

Mr. Walberg. But did you go directly to various coal mining operations, mining operations with different approaches to mining, different techniques and characteristics, and --

Ms. Schneider. I have personally been to different mining operations across the --

Mr. Walberg. -- and directly asked them what impact this would be?

Ms. Schneider. I have not done that previously, but I am doing it in the course of my meetings with the State regulatory agencies.

Mr. Walberg. But you asked the State about their position on whether they thought there was a need for changing rules in mining operations?

Ms. Schneider. Yes. We have those discussions based on the comments that they sent to us. I mean, when I've been out in coal country -- and I've been to West Virginia and to Kentucky and Wyoming and Colorado, and we're planning a trip to Alaska, and I'm planning to go to Ohio -- we'll be asking these questions.

I mean, I think what's important to understand is we're

really just in the middle of a process. We've done, you know, what we think is good work to tee up these issues and to present proposals, but I think the process is working. And what we're trying to do is get good information.

We got great information from the State of Wyoming when we met with them. We are scheduling another videoconference --

Mr. Walberg. Well, I hope that continues.

Ms. Schneider. -- with Mr. Parfitt. And getting that information --

Mr. Walberg. Okay.

Ms. Schneider. -- helps us refine our numbers and our thinking about what would be appropriate.

I will say, I do care a lot about jobs. I used to work in the private sector. I was in the private sector for 13 years. I've worked on coal projects in rural areas --

Mr. Walberg. Well, let me jump in, because I only have a minute and a half left here.

In 2012, a 2012 congressional investigation that you're aware of found out that the Department of the Interior attempted to alter their own coal industry job-loss numbers, estimated at 7,000 at that time. According to your testimony, the rule will not only result in the yearly loss of only 260 jobs, as opposed to 7,000, but produce a net yearly gain of 250 jobs.

Can you explain the disparity between your current estimate of 260 lost jobs and, I guess, also, the 250 compliance

jobs -- those are government jobs -- that will be gained as a result of this, versus the 7,000 you originally had?

Ms. Schneider. Sure. And the answer is, I think, very simple. The 7,000-job number was based on a preliminary draft of the rule. The rule that is on the streets now is different, and so the jobs that are potentially impacted by this rule have changed.

And the jobs that we're envisioning are not just government jobs. We're actually envisioning jobs that would be high-paying jobs in industry, including jobs like water-quality monitoring, materials handling, you know, heavy machinery jobs. I mean, these are well-paying jobs that we expect to continue, some as a result of this rule.

Mr. Walberg. Well, we hope that's the case. I appreciate the information.

And I yield back my time.

Ms. Schneider. Thank you.

Mrs. Lummis. The chair now recognizes Mr. Hice for 5 minutes.

Mr. Hice. Thank you, Madam Chairman.

You know, one of the recurring themes that we see here in the Oversight Committee is government bureaucrats have little regard for the impact that their rules have on businesses and people all across this country. And we have seen it, I have seen it time and time and time again throughout the Federal Government.



And, you know, now, as we come looking at the Office of Surface Mining, the stream protection rule, the same thing is happening all over again.

And it's been brought up today, and I share great concern with the widely different figures as to how this is going to impact specifically the coal industry. According to what I've read from OSM, you believe that there will be about 260 mining jobs lost but 250 compliance jobs created, so, ultimately, costing 10 jobs.

But here we go with compliance police. We don't need more compliance police. We don't need more Federal agents, Federal Government employees. We need to let people work and do what they do best without the government perpetually breathing down their necks, finding someplace that they have done some minuscule something wrong.

We hear it over and over and over. And it's time we get the government off the back of businessowners and businesses and let them do what they are there to do. And you're looking at 250 additional compliance police. It's just very disturbing.

But then you look at the Department of the Interior, the parent agency of OSM, and they had a contractor estimate that their job cost would be upwards of 7,000. So you've got 10. Your parent agency says it could cost 7,000 jobs. And, you know, it just goes on and on and on.

We find out, at least an investigation later determined, the Department of the Interior attempted to downplay the figures

by using falsified information. But whatever the case may be, we have 10 jobs lost, 7,000 jobs lost, depending on who you talk to, when you talk to them.

And then we come, as you mentioned earlier, the National Mining Association, the ones who ought to know the best as to the impact that this rule is going to have on their industry, and their numbers are vastly different. And I'm sure you know what those numbers are, but they estimate between 112,000 to 280,000 jobs that will be lost because of this.

And in the same study, they estimate that the lost value of coal produced could fall between \$14 billion and \$29 billion per year, and the loss of national tax revenue could be as high as \$18 billion.

I mean, the figures are all over the place, Ms. Schneider. And, you know, how in the world can you account for these differences? These are not minuscule differences. These are vast differences. How in the world can you account for this?

Ms. Schneider. Well, let me -- there's a couple of reasons.

First, on the 7,000 jobs lost, as I've testified previously, that is an incorrect number. That number is not based on the proposed rule that is out on the streets today for public comment.

With respect to the numbers that you shared from the two National Mining Association reports, the first set of numbers are based, again, on a preliminary draft that was leaked to stakeholders. Those numbers are not correct. With respect to

the new National Mining Association report that was just recently issued this year, those numbers are also not correct. The high end of those numbers are about the entire job numbers of this entire industry nationwide. This rule will not shut down the mining industry in the United States.

The real issue happening in the coal industry right now is an economic one. It is the abundance of natural gas. It is low prices of natural gas. It is fuel switching by utilities to natural gas. That is decreasing the demand for coal, and that is what is driving job losses in coal country.

Now, the administration would like to work --

Mr. Hice. My time has expired.

Ms. Schneider. -- with Congress --

Mr. Hice. Let me just close up.

Madam Chairman --

Ms. Schneider. -- on our POWER Plus initiative.

Mr. Hice. Thank you very much. My time has expired.

Madam Chairman, you know, I just wonder if this is just nothing other than a final push by Obama's administration, quite frankly, to give a final death blow to the coal industry before leaving office or if this whole thing ultimately just comes down to yet another reckless government bureaucracy playing fast and loose with American jobs.

And, with that, I will yield back. Thank you.

Mrs. Lummis. The chair now recognizes Mr. Jordan for

5 minutes.

Mr. Jordan. Thank you, Madam Chair.

Ms. Schneider, when you started this process, my understanding is you invited several of the impacted States to participate. Is that accurate?

Ms. Schneider. Yes, sir.

Mr. Jordan. How many States did you invite?

Ms. Schneider. I don't have that number, but we can provide it for the record. I was not at the Department at that time.

Mr. Jordan. My understanding is it was 10 States that entered into a memorandum of understanding. Is that accurate?

Ms. Schneider. I don't have that number but can provide it for the record, sir.

Mr. Jordan. Did you enter into a memorandum of understanding with some number of States?

Ms. Schneider. Yes, sir.

Mr. Jordan. Okay.

Ms. Schneider. That is my understanding.

Mr. Jordan. You did. Okay. Do you happen to know how many States entered into a memorandum of understanding? I won't say --

Ms. Schneider. No, sir, I do not now.

Mr. Jordan. Okay.

Did any turn down your offer to -- when you offered States to participate in the process and enter into an agreement with you, did any of them turn it down? Do you know that much?

Ms. Schneider. I was not at the Department at that time. I do not know, sir.

Mr. Jordan. Okay.

Of those States that did enter into a memorandum of understanding with you at the start of this process, how many of them still have a memorandum of understanding with you?

Ms. Schneider. One, the State of Wyoming. And I commend them for their efforts at staying at the table.

Mr. Jordan. So my understanding is 10 States were invited. All of them entered into a memorandum of understanding. At some point, a significant number -- well, nine of them said, we no longer want to work with you guys. Would that be accurate?

Ms. Schneider. Yeah, again, I don't -- I don't know that the numbers are correct.

Mr. Jordan. Well, it's kind of interesting, Ms. Schneider, you know that one State --

Ms. Schneider. I do know --

Mr. Jordan. -- still has it, but you said, oh, there's other States that we offered to work with that did enter into a memorandum, but I can't remember that number. The number we have is 10.

Ms. Schneider. Well, I will stipulate with you, for purposes of the testimony, that that is the correct number.

Mr. Jordan. Okay. Okay. So we got that.

So you had 10 States entered into this process at the start

when you were putting together the rule. When you get to the end of the process or somewhere during the process, 90 percent of the States you've entered into an agreement with said, we don't like where this is going, they're not really working with us. And only one State is left.

Is that accurate? Well, you might not agree with the opinion in there, but the numbers are accurate, right?

Ms. Schneider. A number of the States that OSMRE had previously entered into memoranda of understanding to be cooperating agencies in the NEPA process have terminated their participation. We have sent a letter to them asking them to reengage. I would like to have them reengage. I value their participation in the process, and I would like to see them do that.

Mr. Jordan. No, I'm sure you would, but the fact is they don't want to reengage. And they have been so focused on not reengaging, so disappointed in the process, that nine of them said, we want out.

Ms. Schneider. Right, but I would add --

Mr. Jordan. Now, let me ask one other question, too, then. So isn't there an environmental impact statement that also comes out that you guys put together at the end of this process, as well, right?

Ms. Schneider. A draft of the environmental impact statement has been issued. It was open for the public comment

period of about 3 1/2 months, and --

Mr. Jordan. And how many of those 10 States that originally signed the memorandum of understanding have signed on to the environmental impact statement?

Ms. Schneider. Seventeen States did provide comments on the draft environmental impact statement.

Mr. Jordan. No, I'm talking about the 10 States that originally started with you. Did any of them sign on and say they agreed with the environmental impact statement?

Ms. Schneider. We're still working through their comments. I'm not aware of any States that have said, put our seal on the cover, if that's what you're asking me.

Mr. Jordan. That's exactly what I'm asking. Because didn't a couple of States specifically say, don't put our seal on the cover? Is that right?

Ms. Schneider. I do know that Wyoming took that position.

Mr. Jordan. Okay.

So here's just simple numbers. When you start the process, 10 States enter into an agreement with you to work cooperatively with you. Through the course of the process, judging by their action, 9 of those 10 States said, we want out of this, we don't like where this is going. Then the final statement is an environmental impact statement, and none of the 10 States will sign that or give their stamp of approval.

So 10 percent of the people -- 90 percent wanted out.

Throughout the process, one hung in there, hoping, praying it might be somewhat decent. And then, when you get to the final statement, not one single State that started this process with you is actually in agreement with the final environmental impact statement.

So that's like, I remember I had this guy one time who came to me and he said, you know what -- a guy who ran a business -- he said, "I've been in an argument with six different people today. I don't know what's wrong with all these people." And I kind of looked at him, and I said, "I don't either," because if I'd have said something, I'd have been the seventh, right?

So when you've got 10 States you enter into an agreement with and none of them will sign the final product, that's a problem.

Ms. Schneider. I would clarify, it's just a draft product. We are just in the middle of this process.

Mr. Jordan. A draft product that none of them will sign, and 9 out of 10 States who started with you said "I want out" even before you came up with the draft product.

Ms. Schneider. I will say that a lot of States are willing to meet with us. We either have met with them or we're continuing to schedule meetings with them. I understand your --

Mr. Jordan. Well, you better schedule a lot more because --

Ms. Schneider. I understand your concern. I was not --

Mr. Jordan. -- you certainly don't have much buy-in right



now, Ms. Schneider.

Ms. Schneider. -- at the Department at that time, and what I'm trying to do is make sure that we have a good process going forward.

Mr. Jordan. Thank you.

Mrs. Lummis. The chair now recognizes herself for 5 minutes.

And, Mr. Chairman, before you leave, I'll tell you why the State of Wyoming chose to stay in this.

Mr. Jordan. I figured you'd have something to stay.

Mrs. Lummis. They did it to preserve their ability to engage in litigation.

And that's the problem with this process. The State of Wyoming chose to stay in simply to preserve their right to sue the Federal Government because the process was not cooperative.

And therein lies the problem. OSM agreed for the States to become cooperating agencies under NEPA, which means States are supposed to be fully involved in preparing a draft EIS and regulatory impact analyses. But OSM did not consult with States in preparing these documents. The State of Wyoming complained. Other States complained.

Wyoming's Governor's staff say that the Department just brings State agencies in, reads a list of proposals, and then allows States a few minutes to comment before ending the meeting. That's not cooperating. That is just a pro forma process and

elevating form over substance. The substance of cooperating is give-and-take and a discussion where both sides are given due deference to their concerns.

And a process where 10 States enter into the process and only 1 State comes out at the end and that State does so simply to preserve the right to sue is, in my mind, a failed process. And so I would just remark to you that this process has failed and that it would be wise to go back and start over and go through a truly cooperating status with States so that they feel like they are part of the discussion.

And I can tell you from just the last month in the House of Representatives, it makes a huge difference. Just the change in the new Speaker, Speaker Ryan, has brought about that process of cooperation that didn't exist here before he was Speaker. And his Speakership has already proven the benefits when you allow your stakeholders to be part of the discussion. It really works.

And you will find that States will be marvelous partners if there is truly a cooperative process rather than a command-and-control process. And when States are brought in and given 5 minutes to respond to a list of possibilities that are issued, it just doesn't work. That's nobody's definition of cooperation.

And the States are the ones with the boots on the ground. They have their own processes to deal with the very issues that you are trying to rectify.

And so I'm just admonishing you in a nice way, because I know you're trying, and I know that a lot of this happened under a previous Secretary. But what you've done with this rule is not cooperating agencies between the Federal Government and the States. It's just a check-the-box, and the process is really broken.

We were broken around here. We're fixing ourselves under Speaker Ryan. And so I know you can do it. If we can do it, you can do it. And I know I sound like a weight-loss ad when I say that, but government agencies can reform themselves.

So, with that, I would recognize the gentleman from Colorado, Mr. Buck, for 5 minutes.

Mr. Buck. I thank the chair, and I have no questions.

Mrs. Lummis. The chair recognizes the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. Gosar. Hi, Ms. Schneider. I'm from Arizona, a State with a rich history and expertise in mining. Arizona is sometimes called the Copper State. It is well-known because it's a leader in copper mining.

While many don't consider Arizona to be a coal State, Arizona generates 40 percent of its electricity from coal and produces more than 8,000 tons of coal a year. Coal mining in Arizona supports approximately 4,000 jobs state-wide.

Arizona is also known for its water or sometimes lack thereof. The State is home to hundreds of dry rivers -- streams

that appear in a flash during a rainstorm and disappear as fast as the clouds change. These are also called ephemeral streams, though the exact definition of what that means varies widely.

The SPR adopts the EPA's overreaching definitions of streams developed for the waters of the U.S. rule, which has been blasted by its many authors for serious scientific and legal deficiencies. This committee has heard testimony under oath regarding the dubious and questionable science of the waters rule. In fact, the scientific foundation of the waters rule is in such shambles that the rule has been stopped nationwide by a Federal appeals court.

Now, Ms. Schneider, did the Department or Office of Surface Mining conduct its own analysis of a definition of ephemeral streams or adopt the EPA's definition outright? Which one was it?

Ms. Schneider. Thank you for that question.

The proposed rule does not adopt the EPA waters of the United States --

Mr. Gosar. So you did your own?

Ms. Schneider. -- definition.

No, we used the Corps of Engineers' definition under its nationwide permit program.

One of the things that we wanted to do was to make sure there weren't a whole bunch of new definitions for people to have to grapple with, and to try to use a consistent set of definitions.

In discussions with stakeholders, most agreed that the U.S. Army Corps of Engineers' definition in the nationwide rule would be the one that makes the most amount of sense because, at the end of the day, the Army Corps would be the one determining whether there was a jurisdictional water of the United States.

Mr. Gosar. So, then, who made the decision to base the SPR on science underlying a rulemaking that's not yet final?

Ms. Schneider. We did not. Those rules are adopted every 5 years. Those rules are final and are in place.

Mr. Gosar. So who actually made that decision?

Ms. Schneider. I made that decision.

Mr. Gosar. Okay.

Now, do you intend to implement the SPR if questions regarding the scientific basis for the clean water rule remain unresolved?

Ms. Schneider. Again, the proposed SPR does not adopt the waters of the United States rule that is in --

Mr. Gosar. So you're going to go ahead?

Ms. Schneider. Well, we have a proposed rule on the street. We're taking comments on whether stakeholders -- we've taken comments, I should say, on whether stakeholders think that our proposal to use the Corps' definition in its nationwide permit program is an appropriate --

Mr. Gosar. So you do intend to implement the SPR if the clean water rule is overturned by the courts?

Ms. Schneider. It has not been overturned by the courts, and it's not under challenge. The definition that we're proposing to use --

Mr. Gosar. But if it is overturned by the courts, you're going to go forward?

Ms. Schneider. And so we'll take a look at the public comments and get a sense of whether folks think that is the appropriate approach to take or not.

Mr. Gosar. Okay.

And, in your experience, you would say, yes, go forward? I mean, it seems like you want to propose the rule --

Ms. Schneider. No, I want to make sure I understand what the comments from the stakeholders say --

Mr. Gosar. Yeah. If they --

Ms. Schneider. -- before I make any decisions on a particular direction to go forward in.

And I have a very open mind about this process. I think it's a good process. We've gotten over 94,000 comments on the proposed rule, and, you know, we're still in the process of going through all of those.

But I want to make sure that I personally understand those comments before I'm in a position to say I want to go forward with a particular approach.

Mr. Gosar. Madam Chair, I have another section, so I'll wait for another chance, a turn, before I get started with my next

line.

RPTR MAAR

EDTR HUMKE

[3:30 p.m.]

Mrs. Lummis. The chair now recognizes the gentleman from, Mr. -- excuse me, from Ohio, Mr. Johnson, who is not a member of the Oversight Committee. We thank him for his interest in this hearing topic. And I would ask unanimous consent that Mr. Johnson be allowed to fully participate in today's hearing.

Without objection, so ordered. With that, Mr. Johnson, you are recognized for 5 minutes.

Mr. Johnson. Thank you, Madam Chairman. And, Ms. Schneider, thanks for joining us today. I know that you're here to try and shed light on this very, very important topic. I've been involved in the discussion and the debate on the stream protection rule now for almost 5 years myself. I think that may even be longer than when you got involved with it.

Ms. Schneider. Yes, that would be the case, sir.

Mr. Johnson. What I would like to do, because we're going to get into some topics of detail here, can we have an agreement because we're both looking to find the truth, if I ask you a question and you don't understand the question, just ask me to clarify the question. Because I'm going to be asking you a number of questions. Is that an agreement that you and I could go forward with?



Ms. Schneider. Yes, sir.

Mr. Johnson. Okay. Great. Assistant Secretary Schneider, you know, OSM's own internal analysis of an earlier and much more modest version of the stream protection rule showed that more than 7,000 coal mining jobs, coal miners would lose their jobs in 22 States. Now, Secretary Jewell claims that the new rule will cost approximately 200 miners their jobs, despite the fact that this new rule now amends or modifies 475 existing rules and adds new rules on top of that. Furthermore, Secretary Jewell defines these job losses as minor.

In my view, if there is one coal miner in my district that is highly dependent upon coal for their livelihood, if there's one coal miner that loses their job, it's too many. And we got an independent analysis derived from data gathered at 36 operating mines, not hypothetical model mines, but operating mines, that puts the job loss estimate at upwards of 80,000 coal miners with this rule.

Now, I understand that OSM determined that job loss will be minimal because, supposedly, according to the Secretary, high-wage coal jobs would be replaced by jobs created just to comply with its rule, with this rule. So let's say, for a second, let's just say that that is true. Where would these new jobs be created?

Ms. Schneider. Thank you for that question. Let me just step back and respond to a couple of things that you said.

Mr. Johnson. No, I want you to answer my question, Ms. Schneider. That was the agreement we had. Where would these jobs be created? Would they be created in the communities where the coal miners lost their jobs or would they be created somewhere else?

Ms. Schneider. The jobs that would be, that we are, as I understand the analysis, the jobs that would be created would be created in the coal communities.

Mr. Johnson. Ms. Schneider, there's no industry in those coal communities except those coal mines. So what kind of high-paying jobs would be created in those communities where there's no industry other than coal production?

Ms. Schneider. I'll give you, let me, if I may, give you an example. One of the proposed, and, again, I stress these are proposed provisions, but one of the proposed parts of the rule would provide for increased materials handling and placement of coal refuse. So things like shoot and shove would no longer be allowed. Instead, individual heavy --

Mr. Johnson. How many --

Ms. Schneider. Sir, if may I finish.

Mr. Johnson. I've got limited time.

Ms. Schneider. We have heavy machinery operators --

Mr. Johnson. Ms. Schneider, I've got limited time. I've got limited time.

Ms. Schneider. -- would be the ones doing that --

Mr. Johnson. I've got limited time. We had an agreement, if you don't understand the question, ask. I asked you where would the jobs be created?

Ms. Schneider. They would be materials handling jobs. They would be --

Mr. Johnson. I didn't ask you what kind of jobs. I asked you where would the jobs be created?

Ms. Schneider. In the communities where there are coal mining operations.

Mr. Johnson. Have you visited operating coal mines?

Ms. Schneider. Yes, sir, I have.

Mr. Johnson. You have. And you know what those communities look like?

Ms. Schneider. Yes, sir, I have.

Mr. Johnson. Okay. Well, then I defer to you on that one. Because I visited them too. And these high-paying jobs that you're talking about replacing would not be the case.

One final quick question, does -- and going back to what my colleague from Arizona was asking, does the stream protection rule adopt the definitions of streams, including ephemeral streams that are included in the EPA's clean water rule?

Ms. Schneider. No, sir. My understanding is that we propose to use the U.S. Army Corps of Engineers definition and its nationwide permit program.

Mr. Johnson. Where does the Army Corps get their rule? Did

the EPA get their rule from the Army Corps?

Ms. Schneider. No, sir. My understanding is that the Corps every 5 years issues new regulations, identifying nationwide permits under section 404 of the Clean Water Act. That's my understanding of the --

Mr. Johnson. You're telling me that there is no consistency between the rules of the waters of the U.S. and the EPA and the definition of streams as contained in the stream protection rule?

Ms. Schneider. Our approach to consistency is to make it consistent with the Army Corps' regulations, sir.

Mr. Johnson. And that the Army Corps is different than the EPA clean water rule? Is that your assertion?

Ms. Schneider. I'm not sure I understand your question.

Mr. Johnson. I'm asking you does the stream protection rule use the same definition for streams, including ephemeral streams, that the waters of the U.S., that EPA's rule does? Wherever it's derived from, are they the same?

Ms. Schneider. To the best of my knowledge here today, I do not believe that's the case.

Mr. Johnson. Would you take that question and get back to the committee?

Ms. Schneider. We will do that yes.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Johnson. Because my concern is this, there's been a Federal stay on waters of the U.S. rule by the EPA, the clean water rule. My question would be what would happen to the stream protection rule if that rule is determined to be illegal by the Federal courts? Where does that leave the stream protection rule? So would you take that question for the record as well?

Ms. Schneider. Yes, sir, we will.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Johnson. Thank you very much. Madam Chair, I yield back.

Mr. Buck. [Presiding.] The gentleman yields back. The chair recognizes the gentleman from Arizona.

Mr. Gosar. Thank you again, Chairman. In addition to copying flawed definitions from the court to stayed Lotus rule, the SPR, or the stream protection rule, simply duplicates existing regulations and programs from other agencies. Even in Washington, a city known for ego and Tudor floors, the stream protection rule is a shameless attempt by OSM to take over the roles of the EPA, the Army Corps of Engineers, and, most egregiously, States as the primary protector of water. The rulemaking process behind the SPR, the stream protection rule, exposes the pursuit to more about extending the agency's bureaucratic reach than improving the environmental performance.

Now Ms. Schneider, as I said before, coal mining supports 4,000 jobs in my State which are threatened by this onerous rule. So how can OSM officials justify such a politically motivated, scientifically questionable rule that is clearly more about protecting your job in Washington than improving the quality of life for everyday Americans?

Ms. Schneider. There is no intent or provision in the proposed rule that would take over the EPA program, the Corps program, or State programs. I do think that there has been some confusion about our proposed definition of material damage to

the hydrologic balance and what that would require. I think that --

Mr. Gosar. And do you see why there's that confusion?

Ms. Schneider. Well, you know, I think that this is what this process is all about. You know, we put something out on the street. We're getting good comments back on that. But, you know, we're, you know, the States under our proposed rule, if it goes final, the States will have plenty of flexibility to tailor their rule to their specific needs.

Mr. Gosar. Well, I'm glad you went that way because this is really important to my constituents. So can you tell me how many times you personally met with leaders and families from actual coal producing regions to hear their concerns?

Ms. Schneider. I cannot give you today an actual number. But I have been on numerous trips to coal country. I used to actually represent Arizona Public Service Company. So I understand very well --

Mr. Gosar. I'm not asking for that part. I'm asking for your --

Ms. Schneider. But what I'm saying is I have worked with coal miners in my private capacity, where I was --

Mr. Gosar. That's a little bit different than what it is under your current status.

Ms. Schneider. But it does inform how I think, frankly.

Mr. Gosar. Well, that you have a different hat on, don't

you?

Ms. Schneider. I do have a regulator's hat on. But I do understand the importance of high-wage jobs to rural communities.

Mr. Gosar. I'll give you that so --

Ms. Schneider. So, sir, if I might finish, I have been to Appalachia. I've been down to West Virginia. I've been to Kentucky. I've been to Colorado. I've been to Wyoming. And I'm planning a bunch more trips. I do want to make sure that we get this right. And on each of those trips, I meet with multiple, multiple coal miners.

Mr. Gosar. I got a limited amount of time. So let me redefine that a little bit.

Ms. Schneider. Sure.

Mr. Gosar. So any time or any public comment hearings that actually occurred in coal country that you participated on or hosted?

Ms. Schneider. Yes, sir. I was actually in Gillette, Wyoming, earlier this summer for listening sessions on coal-related issues.

Mr. Gosar. Okay. Are you prepared to assure me and members of this committee that the rule that the OSM finalizes will not lead to further job losses and economic hardship in my coal producing communities?

Ms. Schneider. We are going to take public comment on the rule. We're going to get a better understanding of that. I do



want to make sure that we have a fair and balanced rule that will protect jobs and also adequately protect the environment.

Mr. Gosar. Okay. So tell me how that works in Indian Country? Tell me how you're going to, when this goes into effect, you're actually going to kill the only aspect that actually is a good producing job. What are you going to do for that?

Ms. Schneider. Well, as you know, OSM already directly regulates in Indian Country. So the big coal producing Nations are Navajo, Hopi, and the Crow. And we will work with them. I mean, just as we, as you know, there have been some recent numerous approvals, they're not numerous but there have been recent approvals to allow the Four Corners Power Plant in that Navajo and the adjacent mine to move forward and to expand.

And so I think the Department is very mindful of jobs and, in particular, jobs in Indian communities.

Mr. Gosar. Well, but when you take a look at the effect of this rule, along with the clean power rule, along with all the rest of the regulations going forward. So you can mine coal. You won't be able to burn it. It's a very, you know, combustible type of atmosphere that you're producing here.

So I think you have a huge problem here. I don't envy you at all, particularly with how you respond. Your intentions may be well. But, you know, you're overstepping your boundaries. And that's just like EPA on a number of aspects, they have been hauled into court and they have been stayed. And I would hope

that you would learn from the mistakes, the past mistakes of this administration and rescind this rule. And I yield back. Thank you very much.

Mrs. Lummis. [Presiding.] The chair now recognizes Ms. Norton for 5 minutes.

Ms. Norton. I thank the chair. I'm sure everybody wants to mitigate the effects of what I understand the peer-reviewed studies have found. Is it true that near the sites of the mountain-top removal of coal mining -- and this figure seems to me to be quite amazing. People living near those sites are 50 percent more likely to die of cancer, and 42 percent are more likely to be born with defects, compared with people who do not live near the sites of mountain-top removal for coal mining? I mean those are amazing statistics. Everybody ought to move now.

Ms. Schneider. Congresswoman, I'm not familiar with those particular statistics. I have been to West Virginia and seen the effects of mountain-top mining personally. It is a bit sobering what is going on down there. We continue to see very significant adverse effects of coal mining in those communities, including, most recently, a better understanding of conductivity and selenium impacts.

You know, you go down there and you see, as Congressman Cartwright illustrated in one of his statements, I mean, the water is running orange in some of the areas that I've seen. I've seen water running white from aluminum just coming right out of the

old mine, worked into a stream with a child in it, with his dog playing there. I mean, it's very sobering to see. And, obviously, we talk about the abandoned mine lands and --

Ms. Norton. I would like staff to make sure that Ms. Schneider receives these peer-reviewed studies, because they seem to be -- perhaps it is based on how proximate or how close you are. But however close you are, I've never seen such statistics.

Ms. Schneider. Yeah, I would like to see those studies. Thank you.

Ms. Norton. They're the scariest statistics I've ever seen from peer-reviewed studies. Now this stream protection rule, of course, is about restoration of streams and aquatic ecosystems. Are there adequate protections against drinking water contamination in particular?

Ms. Schneider. Well, ultimately, we believe that if you have clean water, that you will also have cleaner drinking water. And so that's part of our unquantified but anticipated benefits as part of the rule. And what we have here are rules that are over 30 years old. That's what we're trying to update as part of our modernization process. And clearly, science and technology have changed over the last three decades. There are much more modern mining practices. And we want to make sure those are put into place to protect local communities.

Ms. Norton. Let me read to you what one study that was published in a journal, Environmental Science and Technology,

said, and I'm quoting from them, "Overall, the data show that mitigation efforts being implemented in southern Appalachia coal mining are not meeting the objectives of the Clean Water Act to replace lost and degraded systems." And then another scientific publication says about the same thing, "To date, mitigation practices and restoration efforts have not been effective in ameliorating water pollution from mountain-top removal sites." Are you familiar with these studies? And how does this rule pertain to these studies about failure to be effective?

Ms. Schneider. The studies that I'm familiar with make similar types of findings, which is that we could be doing a much better job at restoring these areas. The proposed rule does contain provisions to address that.

Ms. Norton. Are there any penalties for companies who fail to restore stream function that they have contaminated?

Ms. Schneider. Well, most of the programs are handled at the State level with oversight. There are civil penalty provisions and other oversight mechanisms that we can use if the terms of permits are violated. But the States typically would have the first run at that.

Ms. Norton. We are all very sensitive to jobs, particularly after the Great Recession. But I certainly hope these areas -- that someone in these areas is looking to not only what coal mining is doing to health, but to the fact that it's becoming less and less useful. We can't even use oil. We're not using

coal mining. Those who are spending their time trying to save those jobs instead of looking for new areas to make jobs in such States and localities seem, to me, to be doing a grave disservice to the people who live there. Risking their health for a form of energy that is going down, down, down, and out as we speak, not because of hearings in the Congress but because of competition from other forms of energy. Thank you very much, Madam Chair.

Mrs. Lummis. If Mr. Palmer has any questions, he will be recognized.

Mr. Palmer. Thank you, Madam Chairman. I do have something that I want to say about this.

Ms. Schneider, we've seen time and time again, this administration has aggressively pursued this rulemaking driven by political timelines and special interests with reckless disregard for the law and the negative impact it will have on the rural jobs. In the past 7 years, since 2009, the Federal District Court found that the administration unlawfully attempted to bypass the Administrative Procedure Act, when it proposed withdrawing the 2008 stream buffer rule.

In 2010, OSM entered into agreements with 10 States to act as cooperating agencies under NEPA and then shut the States out of the rulemaking process for 5 years. As a result, 8 of the 10 States terminated the agreement with OSM.

In 2011, OSM tried to cover up the findings from one of the contractors who proposed, that the proposed rule would result

in the loss of thousands of jobs, investigations by the Interior inspector general. And the House Natural Resources Committee confirmed the coverup.

OSM ignored a bipartisan letter sent by 33 Senators asking that the public comment period be extended an extra 120 days in consideration of the thousands of pages of technical material related to the rule. Given this rule's checkered history, how can the American public have confidence in the integrity of it?

Ms. Schneider. We are working hard to make sure that we have a good process, particularly on a going-forward basis. We have a, you know, we're reviewing the public comments now. There's roughly 94,000 public comments. The public comment period was open for approximately 3 1/2 months. We did grant an extension in response to the extension request as part of that process.

So, you know, we are committed to making sure we have a good process. I am personally committed to making sure that we have a good process. And, you know, the responses that we've been getting so far, particularly from the State agencies that we're engaging with on a one-on-one basis, has been very positive. And I think we'll have good outcomes. We're getting a lot of good information. And we're taking all of that into consideration as we think about making potential adjustments to what has been proposed.

Mr. Palmer. Well, I can tell you I don't have a lot of confidence in the rulemaking process at this time, and its impact

that it's already had is pretty severe. If you were to come to Alabama and talk with some of the coal mining families and particularly their kids who are facing the prospect of Christmas this year with no presents, talking to families whose children are having to withdraw from college because their dad has lost his job in the coal mine, a job, a profession that they have known for 30 years. They don't know anything else.

I mean, these are not made up stats. These are real people. And I tell you it breaks my heart to see what is being done to these rural communities, seeing what's done to these families who have worked hard. They have been a critical part of our energy infrastructure for years and years and years. And now, it really, at the end of their careers, losing their jobs.

So, Ms. Schneider, with all due respect, I have some serious reservations about the rulemaking process.

And, Madam Chairman, I hope that this committee will be engaged in the process to ensure that the rulemaking process is handled in a better matter. I yield the balance of my time.

Mrs. Lummis. The chair now recognizes herself for 5 minutes. And unless another member comes in, I'll be wrapping up. We've had several questions today about this inspector general's report that was produced in February of 2013. Are you aware of that report?

Ms. Schneider. Yes. I've read the redacted version of the report.

Mrs. Lummis. But not the unredacted version?

Ms. Schneider. No.

Mrs. Lummis. And why is that?

Ms. Schneider. I read the redacted version of the report in preparation for my confirmation hearing. It had just been issued. And I had the opportunity to review the deputy inspector general testify about the report in which he found that there was no undue political influence with respect to the job numbers that were evaluated in that report. He also, as I recall, testified that the contractors were not fired. Rather, they were, their contract was not renewed. So as part of that confirmation process, I reviewed that material.

Mrs. Lummis. And if that's true, then there should be no problem releasing the unredacted version. Because, like you, we have never seen the unredacted version. Can you promise today to release the unredacted IG's report?

Ms. Schneider. What I can commit to you today is taking that request back to the Department and to work with the committee through the accommodations process.

Mrs. Lummis. And the committee staff will follow up with you on this subcommittee's behalf to obtain a copy of the unredacted IG's report.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



Mrs. Lummis. Since there's such a difference of opinion about what transpired with regard to the job numbers, we feel that it would be important to clear it up by seeing the unredacted IG's report.

My next question is about the process going forward. Since we have States that felt that the cooperating agency status that was afforded them was so inadequate as to not constitute cooperating agency status, therefore, they withdrew from the agreement to be cooperating agencies, the one State that remained, Wyoming, has acknowledged it remained only so it could reserve its right to litigate, not a very strong endorsement of the process either.

What can be done to restore cooperating agency status with regard to this rule going forward in this rulemaking process?

Ms. Schneider. Thank you for that question. We have invited all of the prior cooperating agencies to reengage with us as cooperating agencies in the future. Today, none of them have chosen to take us up on that. I would strongly encourage them to participate in that. I want to engage with them. If they're cooperating agencies, we have an opportunity to engage with them in a broader capacity.

I mean, I have an open door policy. I was just, you know, the American Mining and Exploration Association just -- at their annual meeting where I was the keynote just last week, issued a press report praising me on my open door policy. So I'm ready

to listen. And I want to listen. But, you know, folks on the other end need to engage as well. Some have actually declined expressly the opportunity to engage with us. I think that's a shame. We're going to keep trying. I'm not going to take no for an answer because I think that getting this right is the most important thing.

Mrs. Lummis. Would you, in doing so, be willing to suspend timelines for implementation or releasing a final rule so you would have an opportunity to garner true cooperating agency status from the 9 of the 10 States that withdrew from the process?

Ms. Schneider. I would not be willing to suspend the process right now. I think that there's plenty of time in the process. One of the things that I've learned in the rulemaking process is it takes a really long time. And so I do feel that there's adequate time for those States to reengage. And I would encourage them to do so.

Mrs. Lummis. And when do you anticipate issuing a final rule?

Ms. Schneider. It's difficult to say given how much process we have to go through. And we're still working through the comments. Until we get through those comments, I would be reluctant to say. But I would hope sometime in late 2016. But, you know, it would probably be premature for me to say anything definitive until we get through the comments.

Mrs. Lummis. While you're going through those 94,000

comments, and if you had an opportunity to reach out to these 9 of 10 States that withdrew from the process because there was no cooperation, it was a command and control process masquerading as cooperating agency status, would you reengage them in this process? You used the word future processes. And I would like to see them reengaged in this process.

Ms. Schneider. I apologize for not being clear. I mean this process going forward.

Mrs. Lummis. So while you're reviewing the 94,000 comments, you are willing to reengage the 9 of 10 States that chose to disengage because the process was not cooperating agency status in their minds?

Ms. Schneider. Yes, we are. And, in fact, we're meeting with several of them on the rule itself.

Mrs. Lummis. I appreciate your testimony today. I know that it has been challenging to get this scheduled. And it has -- we have made several attempts. And you have been very cooperative in our efforts to schedule this hearing. And I want you to know how much I appreciate it.

Given the fact that there are no further questions, we will make our final thank you to the witness for taking the time to be with us today. And there appearing to be no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 4:00 p.m., the subcommittees were adjourned.]