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Jobs at Risk: Waste and Mismanagement by the Obama Administration in Rewriting the Stream Buffer Zone Rule

Witness

Joseph Pizarchik

Director, Office of Surface Mining Reclamation and Enforcement

Subcommittee Members Present

Doug Lamborn, Chairman (R-CO)

Rush Holt, Ranking Member (D-NJ)

Bill Flores (R-TX)

Bill Johnson (R-OH)

Glenn Thompson (R-PA)

Jeff Duncan (R-SC)

On November 4, 2011, the House Committee on Natural Resources Subcommittee on Energy and Mineral Resources held an oversight hearing to discuss the Obama Administration's efforts to replace the 2008 Stream Buffer Zone Rule (SBZ) with a new Stream Protection Rule (SPR) and their ensuing effects on local jobs and the environment. The committee took the opportunity to discuss Secretary of the Interior Ken Salazar's decision to incorporate the Office of Surface Mining (OSM) into the Bureau of Land Management (BLM). This hearing follows the September 26 field hearing that discussed the impacts of the SBZ rewrite on local West Virginia communities.

Chairman Doug Lamborn (R-CO) opened the hearing stating that he is "deeply concerned" about the potential impact that the SBZ rewrite will have on coal mining jobs and on the nation's access to coal resources. Providing a quotation from former Wyoming Governor Dave Freudenthal, Lamborn argued that the current process to rewrite the SBZ does not provide states "meaningful opportunity to comment and participate." Regarding the placement of OSM within BLM, he mentioned that there are "clear statutory limitations" prohibiting OSM from leasing or promoting coal production, both of which are responsibilities of BLM.

Ranking Member Rush Holt (D-NJ) said in his opening statement that over two thousand miles of Appalachian streams have been filled with rocks and debris from mountaintop removal, according to the Environmental Protection Agency (EPA). As such, Holt stressed waters and streams need to be protected for the local people in nearby communities. Holt told the committee that Polu Kai Services (PKS), the contractor charged with preparing an environmental assessment of the SPR did not have any expertise on the topic, and he "hopes that the majority doesn't use inadequate documents." In his opinion, the current rule does not protect stream and water quality, and the central issue of this hearing should be the protection of the environment and the people living in affected areas.

Full Committee Ranking Member Ed Markey (D-MA) said, "Mountaintop removal is one of the most environmentally destructive activities." He told the committee that the SBZ was a "midnight rule" enacted by the Bush Administration to increase coal production, thus OSM needs to improve the rule to take the environment and public health into consideration.

Joseph Pizarchik, Director of OSM, said in his testimony that the 2008 SBZ Rule is being revised because "they are areas that should be improved," including enhancing land reclamation and regulatory provisions, and reducing the impact of coal mining on water and aquatic ecosystems. Pizarchik noted that the Environmental Impact Statement (EIS) from OSM will look at a range of alternatives and their individual economic impacts. The proposed rule and associated draft EIS, both open for public, state, and federal input, will be published in 2012.

During the question and answer period, Lamborn told Pizarchik that OSM has not explicitly explained the environmental impacts that have prompted the SPR. Pizarchik said, "If you look at what is happening in the field, there are a number of cases that weren't

considered” when the 2008 SBZ rule was established. He gave examples such as fish depletion in streams due to high total dissolved solids (TDS), selenium bioaccumulation in fish populations, and the “shoot and shove” process which allows excess rocks and debris to be released downslope causing blockage in streams. He later added that valley fill regulations and geomorphic land reclamation techniques need to be updated, the reforestation and “material damage” statutes need more detailed definitions, and baseline data regulations need to be enforced. Lamborn told Pizarchik that this list of cases was not mentioned in OSM’s federal register notice announcing the SPR. Lamborn expressed concern that OSM is not examining a full range of options, including a “no-action” option. Pizarchik said that each option is being considered under the National Environmental Policy Act regulations.

Bill Johnson (R-OH) asked Pizarchik to respond to claims that the SPR has been created at a “world-record pace.” While it has been moving along “in a timely fashion,” Pizarchik assured the congressman that the process has had more public involvement and comment than the 2008 rule received. When asked about what prompted the new SPR, Pizarchik referred to an environmental lawsuit that caused OSM to consider making amendments to the current SBZ.

Lamborn expressed concern about job losses as a result of the SPR and asked Pizarchik if the EIS will examine economic and job consequences. Pizarchik said he is “not an expert on the economics,” but he can assure the new contractor will give full attention to all possible outcomes. According to Pizarchik the SPR will not reduce the number of jobs, as more people will be needed to take water quality samples and transport rock and debris out of the valleys. Ranking Member Holt asked if OSM should give weight to the results that PKS reported in its assessment, given that their report was deemed “inaccurate and incomplete... and insufficient for a document of this importance” by OSM. Pizarchik said that the findings from PKS will not be used and another contractor is performing a new assessment. In response, Johnson asked how OSM knew that the report supplied by PKS was insufficient. Pizarchik said that “everybody can agree” that PKS used placeholder numbers plugged into a formula that produced arbitrary values.

Ranking Member Holt expressed concerns that OSM will lose experts during its incorporation into BLM. Pizarchik replied that some efficiencies will actually be gained during the reorganization. He quoted Interior Secretary Salazar, saying “OSM is an independent entity” and will be able to maintain its authority once incorporated into BLM. Glenn Thompson (R-PA) asked if OSM could avoid reorganization by using its resources more efficiently. Pizarchik said insufficient agency support and staff cuts forced OSM to seek outside assistance with its oversight and technical support functions. Bill Flores (R-TX) noted to combine leasing and regulatory responsibilities for the coal industry is contrary to the administration’s recent decision to split these jurisdictions into the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) for the offshore drilling industry. Flores and Johnson insisted the Department of the Interior has no statutory authority to merge the two agencies, but Pizarchik said the Surface Mining Control and Reclamation Act (P.L. 95-87) only prohibits OSM to collaborate with an agency that has a financial interest in coal production. He assured Johnson the statutory provisions in the SBZ will be looked at without seeking legislative amendments, and OSM will be receiving congressional input on the SPR.

The hearing webcast, majority opening statement, and witness testimony can be found on the committee web site.