

April 28, 2016

The Honorable Janice Schneider  
Assistant Secretary for Land and Minerals Management  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Assistant Secretary Schneider,

I request that the Office of Surface Mining Reclamation and Enforcement (OSM), an Office that you oversee at the Department of Interior, comply with the report language accompanying the Consolidated Appropriations Act of 2016, P.L. 114-113, and meet with the relevant State of North Dakota stakeholders in Bismarck sometime after June 15, 2016 – and prior to finalizing the Stream Protection Rule (SPR).

The report accompanying P.L. 114-113 requires OSM to reengage with states in a meaningful way before finalizing the SPR by: (1) providing the states with all technical reports, data, analyses, comments received, and drafts relative to the environmental reviews, draft and final environmental impacts statements (EIS); and (2) meeting with any state upon the request of the state. 161 Cong. Rec. H10217 (Dec. 17, 2015). In an April 8, 2016 letter, the North Dakota Public Service Commission (NDPSC) advised Joseph Pizarchik, Director of OSM, that this obligation had not been fulfilled based on the meeting date and location that you offered – and I agree with this assessment. (*see attached for letter*)

NDPSC Reclamation Division Director James Deutsch noted in the April 8<sup>th</sup> letter that OSM provided the NDPSC with lists of “technical reports, data, analyses, and related reference materials” on March 1, 2016; however, the documents were incomplete as they did not include the *drafts* of the environmental reviews, and drafts and final EIS. Further, the majority of the material sent focuses largely on conditions in Appalachia – and does not appear to take into account the specific and unique characteristics of North Dakota’s geography and lignite mining practices. As Director Deutsch noted, “it appears none of the reference materials identify any specific concerns or problems with surface coal mining in North Dakota,” nor do the documents “address site specific characteristics of streams in [our] mining areas.” Based on this determination and other examples provided by Director Deutsch, it is clear that OSM did not take hydrologic and geologic conditions of North Dakota into account when drafting the proposed SPR.

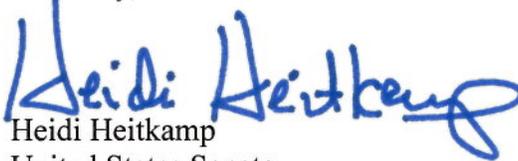
I understand OSM offered to meet with states during concurrent regional meetings on April 14 and 21, 2016, to discuss only technical issues with the draft EIS and regulatory impact analysis

(RIA) and the rule itself. To be clear, I do not believe these meetings satisfy the directive in the report language, nor do they provide any state, including North Dakota, enough time to review the reference material on which these meetings will be held.

In order to fully comply with the report language, please work with OSM to provide a schedule that will set a date by which all documents directed under the Omnibus Appropriations report language are to be provided, including all draft chapters of the DEIS; when OSM will meet with Director Deutsch and his staff individually after having provided all necessary documents and time to review them, in Bismarck, North Dakota; and whether OSM is planning to reopen the public comment period for the proposed SPR and its associated DEIS and RIA after having provided meaningful consultation with NDPSC.

I look forward to discussing this with you further when you are in North Dakota next week – and I hope that this lead to a more cooperative OSM engagement with North Dakota and other states regarding the proposed SPR.

Sincerely,

A handwritten signature in blue ink that reads "Heidi Heitkamp". The signature is written in a cursive, flowing style.

Heidi Heitkamp  
United States Senate

cc: Joseph G. Pizarchik, Director, Office of Surface Mining Reclamation & Enforcement