

Opening Statement  
Chairman James M. Inhofe  
Full Committee Hearing on “The Stream Protection Rule: Impacts on Endangered  
Species Act and Clean Water Act Implementation.”

Today’s hearing is to examine the Department of the Interior Office of Surface Mining’s Stream Protection Rule and its nexus with implications to the Clean Water Act and the Endangered Species Act. I would also like to discuss the NEPA process for developing this rule – in particular, OSM’s failure to allow States a meaningful opportunity to participate in the NEPA process, even though they were cooperating agencies under NEPA.

This rule establishes the conditions a coal mining operation must meet to receive a permit under the Surface Mining Control and Reclamation Act – also known as SMCRA [*smack-ra*].

SMCRA includes provisions for protecting the environment. However, SMCRA also specifically says that it does **not** authorize duplicative federal environmental regulation. And, under SMCRA, in 24 authorized States, the State agency, not the federal government, makes coal mining permitting decisions.

Unfortunately, the rule that the Office of Surface Mining proposed last July would establish new onerous conditions that duplicate or supersede existing Clean Water Act authorities of States and the Corps of Engineers.

Under the Clean Water Act, States establish water quality standards. The so-called Stream Protection Rule would override that authority and let OSM set new water quality standards for coal mining operations. These new standards are set at the whim of OSM, without any of the notice and comment rulemaking required under the Clean Water Act and can be used to override State water quality certifications and State coal mining permitting authorities.

Under the Clean Water Act the Corps of Engineers issues permits to fill in streams. The so-called Stream Protection Rule would allow OSM to override the Corps' authority by adding conditions to SMCRA permits over and above what the Corps requires in a section 404 permit and by creating even more confusion over the reach of federal authority under the Clean Water Act – the issue that is being litigated as part of the WOTUS rule challenges.

Under the Endangered Species Act, the Fish and Wildlife Service lists threatened and endangered species. Under the so-called Stream Protection Rule, States are required to meet new conditions that apply not only to listed species, but also species that FWS has proposed for listing, circumventing the notice and comment rulemaking process required for listing new species under the ESA. Even worse, the proposed rule would give FWS unprecedented veto authority over state permits.

Under NEPA, cooperating agencies are supposed to be granted access to information and an opportunity to provide comments while an Environmental Impact Statement is being developed. Eleven states became cooperating agencies for the EIS for this rule. However, OSM shut them out of the process, failing to provide any information to States since early 2011. As a result, OSM developed a rule for a State administered program without adequate state involvement.

The unauthorized provisions of this proposed rule will have a significant adverse effect on mining states. It will add so many layers of bureaucracy that mining permits will halt and even current permits could be reopened, causing severe economic impacts. In comments she filed on this proposed rule in September of last year, Senator Capito noted that finalizing this rule would result in an annual loss in coal production valued at \$14-20 billion and losses in federal and state revenues of \$4-5 billion a year.

The coal industry has already lost tens of thousands of jobs in the past few years. We must be cautious to ensure we don't regulate into extinction one of the most important energy sources for this country.

So, this is the situation created by this proposed "stream protection rule" –

State water quality standards under the Clean Water Act will be superseded by new standards that OSM creates.

The Corps of Engineer's permits under section 404 of the Clean Water Act will be superseded by new conditions imposed by OSM.

A permit that a state coal mining permitting authority wants to issue can be vetoed by the Fish and Wildlife Service based on impact to species that are not even listed under the Endangered Species Act.

All this federal overreach is going to impose severe hardship on coal miners and the states they live in.

I want to thank our witnesses for being here today. Unfortunately one of our witnesses, Director Todd Parfitt, was unable to make it to today's hearing due to weather issues. I ask unanimous consent that his statement be placed in the record. Thankfully, we have Mr. Larkin here with us today who was able to step in last minute. I look forward to hearing all of your testimonies.