

**Statement of Lorali Simon
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**before the
Subcommittee on Fisheries, Water and Wildlife
Committee on Environment and Public Works
United States Senate**

**regarding
Impacts on the Proposed Waters of the United States Rule
on State and Local Governments and Stakeholders**

**April 6, 2015
10:00 a.m.
Loussac Library Assembly Chambers
3600 Denali Street
Anchorage, Alaska 99503**

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Good morning Chairman Sullivan and members of the committee. Thank you for the opportunity to come before you today to discuss the proposed rule regarding the expansion of the definition of Waters of the United States, and its potential impacts on Usibelli Coal Mine. My name is Lorali Simon; I am the Vice President of External Affairs at Usibelli Coal Mine. We are celebrating our 72nd year of operation. Usibelli proudly supplies 100 percent of the in-state demand to six coal-fired power plants, as well as exports close to one million tons of coal to customers in Chile, South Korea and Japan. Usibelli currently employs 115 people. The average wage paid to Usibelli employees is more than double the average wage in Alaska. Usibelli's operations directly provide 25 percent of all employment for Healy year-round residents. The \$12.9 million paid to our Healy employees in 2013 represented nearly 60 percent of all wages paid to Healy residents.

Usibelli is deeply concerned about a proposed rule by the Environmental Protection Agency which would significantly increase the jurisdictional waters of the United States under the Clean Water Act. Should this proposed rule be finalized, it will likely stop all development in Alaska – small, private developments, as well as large resource development projects.

The proposed rule expands federal jurisdiction over State lands to include all ephemeral and intermittent drainages, seeps, and marginal wetlands. According to the EPA's website the proposed rule determines that all streams regardless of size or how frequently they flow are jurisdictional waters; all wetlands and open waters in flood plains and riparian areas are jurisdictional waters; and that there is insufficient information to generalize jurisdiction of waters not in flood plains or riparian areas.

An illustration of the extent of the federal jurisdictional expansion of state lands was conducted by the Waters Advocacy Coalition for a section of Kentucky. A map of Alaska would look worse. Alaska is unique in that 61 percent of our state is already under federal jurisdiction and 88 percent of the jurisdictional waters are under public management.

We believe this proposed rule will subject many more mining activities and operations to regulation under the Clean Water Act than currently are covered by law and regulation. Alaska has unique features such as permafrost and tundra that could be considered jurisdictional waters. The mining industry uses sophisticated and engineered structures such as impoundments, ditches, channels, ponds, and pits that could also become jurisdictional waters under the proposed rule. I hope you understand our concern over the possibility that historically non-

jurisdictional on-site stormwater and surface water management features will be deemed jurisdictional, and the complications surrounding distinguishing ephemeral tributaries from non-jurisdictional features, will increase delays, costs, and permitting requirements. Usibelli is troubled by the breadth of the definitions in the proposed rule, which could be misconstrued as encompassing previously non-jurisdictional waters and treatment systems on mine sites across the country.

As you know, the EPA and the U.S. Army Corps of Engineers currently require compensatory mitigation to promote no net loss of wetlands from development projects. Anyone wishing to obtain a permit to impact a wetland or other aquatic resource must first avoid and minimize impacts, and then compensate for unavoidable impacts. Typically, for every one acre disturbed, there must be three to 10 acres preserved. If the proposed expansion of jurisdictional waters becomes final, it will be *nearly impossible in Alaska* to meet the compensatory mitigation requirements, as most of the wetlands in Alaska are already under public management and not available for selection. The result will be an increase in price for the small amount of land remaining available for compensatory mitigation.

The local, statewide, national, and global economic benefits that mining provides are unquestionable. These benefits are derived from employment, wages, economic activity due to purchases of goods and services, and payment of taxes, royalties, and fees to local, state and national governments. Usibelli is committed to conduct our activities in a manner that recognizes the needs of society and the needs for economic prosperity, national security, and a healthy environment. Accordingly, Usibelli is committed to integrating social, environmental, and economic principles in our mining operations from exploration through development, operation, reclamation, closure, and post-closure activities.

Thank you for the opportunity to testify today. I am happy to answer your questions.