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west virginia department of environmental protection

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Division of Mining and Reclamation  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

May 19, 2015

The Honorable Joseph G. Pizarchik, Director  
Office of Surface Mining  
U.S. Department of Interior  
1951 Constitution Avenue, NW  
Washington, DC 20240

Re: Cooperating Agency Status

Dear Director Pizarchik:

It is with disappointment, the West Virginia Department of Environmental Protection (WVDEP) informs you that WVDEP terminates its cooperating agency status with the Office of Surface Mining Reclamation and Enforcement (OSM) in the preparation of a draft Environmental Impact Statement (EIS) as outlined in the "Memorandum of Understanding between OSM and WVDEP for EIS activities under NEPA for Stream Protection rulemaking".

In August 2010, WVDEP signed the MOU with OSM in good faith, fully expecting to be engaged with OSM as the lead agency proceeded with the development of the draft EIS, described in the MOU. However, OSM has consistently failed to meet the terms of the MOU and related federal regulations regarding cooperating agency status.

As we learned at a recent briefing by OSM on the EIS preparation and proposed rulemaking on April 27, 2015, OSM has, among other things, substantially revised the draft EIS to expand the range of alternatives from four to nine, selected a preferred alternative and gone beyond the original scope in examining the federal stream buffer zone rule. These revisions were undertaken without meaningful input from West Virginia and other states that agreed to participate in the EIS as cooperating agencies. At this same briefing, OSM informed the cooperating agencies there would be no further opportunities for cooperation, unless OSM needed information in response to public comments, and the states would see the draft EIS once it is published for public comment.

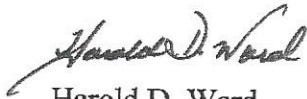
Because of the lack of fundamental engagement, WVDEP believes it is no longer in the best interest of the environmental regulatory programs it implements and the State of West Virginia to continue as a cooperating agency.

Promoting a healthy environment.

It is requested that references indicating WVDEP as a cooperating agency be removed from any published draft EIS as well as related documents. It is also requested that the WV state seal not appear on the cover or within the draft EIS or publication of it in the *Federal Register*.

WVDEP values its working relationship with OSM and looks forward to cooperating with OSM and all federal agencies in order to accomplish effective environmental regulation for stream protection and all other matters even though it is regrettable WVDEP will participate in this matter as something other than a cooperating agency.

Sincerely,

A handwritten signature in cursive script that reads "Harold D. Ward".

Harold D. Ward  
Acting Director