

# United States Senate

WASHINGTON, DC 20510

June 28, 2016

Shaun Donovan  
Director  
The Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Director Donovan:

We write to express our significant and ongoing concerns that the Office of Surface Mining Reclamation and Enforcement (OSMRE) has prematurely sent the proposed Stream Protection Rule to the Office of Management and Budget (OMB) for finalization.

In report language accompanying the Consolidated Appropriations Act of 2016 (Public Law 114-113) enacted on December 18, 2015, Congress directed the Office of Surface Mining Reclamation and Enforcement to meet with any state with primacy that requests a meeting and to provide the states with all technical reports, data, analyses, comments received, and drafts related to the environmental reviews, draft and final environmental impact statements of OSMRE's proposed stream protection rule.

In February and March 2016, eighteen state agencies, including the West Virginia Department of Environmental Protection, sent letters requesting that OSMRE supply the states with a list of documents that were used but were not publically available during the rule's drafting. OSMRE responded to the states' requests in a letter with a bibliographic listing of the reference materials and not the actual documents as requested. OSMRE also provided the states with instructions for states to independently search for reference materials, which, in some cases are copyright-protected, and must be collected via state library collections or university libraries. One state found that various websites, links and other materials were no longer accessible once they started their research.

Furthermore, in the spring of 2016, twelve states sent another letter to OSMRE requesting additional information and technical questions which the regional meetings did not fully address. Several states expressed that they did not consider the regional meetings to be an adequate venue to discuss their concerns and notified OSMRE that they would request an individual meeting at a later date. Despite credible state concerns, and difficulty accessing needed information, OSMRE is continuing to press forward with this highly impactful regulation.

We believe OSMRE has failed to adequately engage in meaningful discussion with state stakeholders and that an extension of the comment period is warranted. States are currently working through an exhaustive volume of documents (the bibliography provided by OSMRE

itself is 112 pages), with limited resources on a rule which by OSMRE's own estimate will cost the coal industry \$52 million dollars in annual compliance costs. Nearly 46% of the expected compliance costs reflect new regulatory requirements on coal mining operations in Appalachian states like West Virginia. When states have to be subjugated to costly and burdensome regulation, they should be warranted ample time to complete a detailed review and engage in substantive conversations with regulatory issuing agencies.



Joe Manchin, III  
United States Senator



Shelly Moore Capito  
United States Senator