

Written Testimony of John Corra, Director, Wyoming Department of Environmental Quality before the Senate Committee on Energy and Natural Resources re Oversight Hearing on the Secretary of Interior's Order No. 3315 to Consolidate and Establish the Office of Surface Mining Reclamation and Enforcement within the Bureau of Land Management – November 17, 2011

My name is John Corra. I am the Director of the Wyoming Department of Environmental Quality. I wish to thank the Committee for inviting the State of Wyoming to testify at this hearing today. Wyoming coal mines produced 442 million tons of coal in 2010, over 40% of the nation's total production. I am also here to present the views of the Reclamation Committee of the Western Interstate Energy Board, which includes Utah, Colorado, New Mexico and Montana, who along with Wyoming are produce over half of the nations coal supply.

Wyoming is a unique state in that we are the nation's leading exporter of energy, and stand to increase this position as renewable energy resources such as wind power are developed. We have outstanding natural resource values, both in terms of mineral development and in terms of scenic beauty. Our natural resources largely define both the "why" and the "how" we live in Wyoming. Mineral development accounts for two thirds of the state's economic well-being. It is critical that we manage the development and use of these resources in a way that serves our various interests.

An inextricable part of this challenge is the relationship with our federal partners, as evidenced by an ownership situation where the federal government owns 48% of the land surface and 67% of the mineral estate in Wyoming. We do not control all of the elements of energy development yet we believe in our inherent right to control our destiny. Thus we have a keen interest in the recent announcement by Secretary Salazar to combine two federal agencies that play a key role in the development and preservation of the natural resources in our state. This consolidation is a significant reorganization effort that has greater potential for failure than success unless serious consideration is given to the crucial role that states play in the accomplishment of the very diverse missions of the Bureau of Land Management (BLM) and the Office of Surface Mining (OSM).

Communication, collaboration and consultation with the states are not only crucial, but are also essential to achieving positive outcomes that meet Secretary Salazar's goals articulated in his Order. We have a long history of working very well with our local counterparts in both the BLM and the OSM. I can't stress that enough. Over the past few years, and continuing today, the BLM has been updating their Resource Management Plans and conducting environmental assessments on a number of large energy development projects. The quality of these assessments is high, and a direct result of working closely with the state. Our OSM point of contact serves the state very well while also fulfilling the mission of the Surface Mining Control and Reclamation Act (SMCRA).

The relationship we have with the OSM personnel who are on the ground in Wyoming and in other western states is based on the policy and purposes of SMCRA including the federal responsibility to assist States in developing and implementing a program that will achieve the goals and purposes of SMCRA, which are to protect society and the environment from the

adverse effects of surface and underground coal mining operations. The federal entity retains oversight and the terms and conditions of the relationship have been well refined over thirty years. Examples of highly valuable contributions from OSM are the Technical Information and Professional Services program, training, and the facilitation of sharing best practices across the nation. The value of the states and the critical role played by States and Tribes is acknowledged and highlighted even by OSM. The OSM mission statement includes the statement that *“Our mission is to carry out the requirements of the Surface Mining Control and Reclamation Act (SMCRA) in cooperation with States and Tribes.”* OSM also highlights this relationship in their Vision Statement: *“In cooperating with State regulatory authorities, the primary enforcers of SMCRA, and with Tribes, we will promote a shared commitment to the goals of the Act.”* Of interest are the positive references to the relationship between States and Tribes as noted prominently on the OSM website. One reference reads: *“The Bureau, usually referred to simply as the Office of Surface Mining or OSM, was created in 1977 when Congress enacted the Surface Mining Control and Reclamation Act. OSM works with State and Indian Tribes to assure that citizens and the environment are protected during coal mining and that the land is restored to beneficial use when mining is finished. OSM and its partners are also responsible for reclaiming and restoring lands and water degraded by mining operations before 1977.”* Another reference highlights the successes that have been achieved: *“Although a small Bureau, OSM has achieved big results by working closely with those closest to the problem: the States, Tribes, local groups, the coal industry and communities.”* The States and Tribes have had the overwhelming share of SMCRA Title IV and Title V implementation duties for many years and that fact must be central to any discussion of consolidation. The leadership role played by States and Tribes in partnership with the OSM has resulted in a very successful record of implementing and managing mining regulatory programs associated with both active mining operations and abandoned mine lands.

OSM’s role must be viewed in contrast with our interactions with the BLM, whose mission is to manage the public lands in a manner that recognizes the Nation’s need for domestic sources of minerals, food, timber and fiber. BLM’s statutory mandate under the Federal Land Policy and Management Act (FLPMA) relates to multiple use and sustained yield through resource management and land planning. They have some limited regulatory functions and they collect royalties and other fees. Regarding coal mining, their primary role is one of assuring resource recovery and maximizing revenue. While they conduct environmental assessments in this process, their role is much different than the regulatory review of an application for a permit to mine. Not the least of our many questions concerning the proposed merger is how this obvious conflict of interest with the role of OSM can be reconciled. Additionally, under FLPMA the states are not allowed the opportunity for “primacy”, and are left to negotiate Memoranda of Understanding (MOU) that outline the role we play in managing minerals in Wyoming. We regulate the mining and reclamation of non-coal minerals while the BLM handles the mineral claims and royalties. We also provide the management and technical assistance necessary for BLM to conduct its non-coal abandoned mine reclamation efforts. Another question is under which model, that of an MOU or that of a primacy arrangement would best ensure that the intent of SMCRA is preserved.

The current organization model appears to serve this purpose and avoids the types of conflict of interest issues that have been raised over the Deepwater Horizon oil spill in the Gulf of Mexico.¹ While it is true that OSM collects fees, these are unrelated to both mine permitting and the sale of coal leases. If this merger was intended to simply consolidate the collection of fees and royalties, we might be less interested in the outcome. If it is about implementing what we believe to be poorly thought out ideas such as consolidating Abandoned Mine Land reclamation at the federal level and taking away fees from certified states and tribes, we would be speaking out in more affirmative ways. And, if the merger is also intended to change the way the states obtain authority to regulate, i.e. from one that is spelled out clearly in rules to one that is the best deal we can negotiate through an MOU, the states are severely impacted by the merger. Our concerns are further heightened by the many attempted unilateral impositions by OSM over the past year or two. To name just a few: the expanded use of “Ten Day Notices” to apply to permits issued by States; the nation-wide expansion of a negotiated settlement with other federal agencies on a stream protection rule; and what appears to be a push to require states to charge fees to recover the costs associated with their regulatory programs because OSM wants to reduce federal funding for the administration of Title V of SMCRA.

The States are thankful for the existence of very clear legal rights spelled out in SMCRA. While we have questions about whether the merger can be completed without changes to the organic acts that govern both the OSM and the BLM, we are clearly the “stakeholder” with the most to lose. In this regard, we note that President Clinton’s Executive Order No. 13132 on Federalism, in referring to legislation, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government requires consultation with the States early in the process. It also requires a federalism impact statement be provided to the Office of Management and Budget consisting of a description of the extent of the agency’s prior consultation with the States, a summary of the nature of State concerns and the extent to which those concerns have been met. Will this mandate be honored in a meaningful way?

¹ Interestingly, in a recent description of the reorganization of the former Minerals Management Service, pursuant to which Interior has created three independent entities to better carry out the three missions of MMS, Interior stated that: "In place of the former MMS, we are creating three strong, independent agencies with clearly defined roles and missions. MMS -- with its conflicting missions of promoting resource development, enforcing safety regulations, and maximizing revenues from offshore operations and lack of resources -- could not keep pace with the challenges of overseeing industry operating in U.S. waters. The reorganization of the former MMS is designed to remove those conflicts by clarifying and separating missions across three agencies and providing each of the new agencies with clear missions and additional resources necessary to fulfill those missions." We assert that this is exactly the type of thinking and analysis that attended the creation of OSM in 1977 and that it continues to hold true today.

We also have tremendous expertise and experience that would inform the merger process, but have serious concerns about whether the OSM and BLM will take our ideas and input into consideration. We are on record with our concerns over the development of the Environmental Impact Statement (EIS) for the stream protection rule, but I must repeat the issues because they are directly related to our anxiety over how this merger process will proceed.

- The purpose and need for the SPR was never clearly articulated nor was it vetted with the states.
- The process for gathering public input was flawed, as witnessed in Wyoming where the public meeting was held the night before the comment period ended, and the public was not allowed to speak.
- Consultation with the states consisted of sending voluminous sections of the EIS while allowing the states only days to review and comment. Not once did the consultant meet with us to seek our input and understand the differences between the East and West.
- Most importantly, the action was so hurried that careful consideration of how the rule making would interfere with other federal and state authorities was totally lacking.

We understand that there is a need to streamline the way the federal government does business, and achieve economies of scale wherever possible. A recent Memorandum of Agreement between the BLM and EPA regarding air impacts analysis purports to do this, and is an example of how the affected states were ignored until the negotiations were final.

We simply want to avoid the law of unintended consequences and any further burdens and unfunded mandates being placed on our states. It is unfortunate that the order to consolidate the OSM and BLM has been issued without a thorough vetting with the affected states prior to any final decisions. In addition to the questions posed above, we also have the following concerns:

- How will the consolidation affect the existing productive working relationship between OSM field personnel and state program personnel?
- Will the consolidation affect the allocation of funds for state coal mine regulatory programs?
- Will the consolidation affect the allocation of funds to state abandoned mine land programs?
- Will the consolidation change the oversight of state regulatory and AML programs?
- Are there better ways to improve government operations than shuffling boxes on the Interior Department's organization chart? For example, could actions be taken to enable the BLM to benefit from the OSM's high successful TIPS program and technology transfer programs with states?
- How much money could be saved by reducing waste at the OSM caused by a management decision to turn regional or local issues (e.g., mountaintop mining and revised stream protection rules) into national issues which are not germane to most parts

of the country?

- How will the inevitable change in culture that follows a consolidation of agencies with maximizing functions) affect western state regulatory programs? The culture of the OSM out West is for a single regional field office, overseeing several states whereas the BLM culture is one where each state has not only a state office but also many regional and local offices. The hierarchical differences alone warrant a close look at how work is done in each agency.
- Would a consolidation affect existing cooperative agreements under which states regulate coal mining on federal lands? Would a consolidation affect other agreements between western states and DOI, such as agreements on the regulation of non-coal mining on federal lands?
- Where will the “savings” from the consolidation be realized?

No consolidation should occur until these and other issues affecting states have been resolved through robust consultations between the Department of Interior (DOI) and Western states.

In closing, OSM has stated the hope that we will offer constructive ideas. We look forward to the opportunity and hope it is not a rehash of our recent experience. Perhaps the consolidation process ultimately chosen by DOI will be guided by well known key steps to transforming organizations. These are well documented, but I cite here those presented by Mr. John P. Kotter in his 1995 Harvard Business review article, *Why Transformation Efforts Fail* and his 1996 book, *Leading Change*. Essentially these are establishing a sense of urgency, forming a powerful coalition, creating a vision, communicating the vision, empowering others to act on the vision, planning for and creating short term wins, consolidating improvements and institutionalizing the new approaches.

We ask: What is the vision for this merger? What is the business case? And lastly, who is part of the guiding coalition? There is great potential for damage to be done to the states with no rationale presented to date on how we might gain from the merger. In one sense, the two agencies are already “merged” within the DOI. We would be greatly surprised if there were not already targeted areas for improvement. We ask that you urge the Secretary to immediately engage the states in his planning process.