

OFFICE OF ENERGY SERVICES
Energy, Minerals and Natural Resources Department

Susana Martinez
Governor

David Martin
Cabinet Secretary

Brett F. Woods, Ph.D.
Deputy Cabinet Secretary



February 20, 2015

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining
1951 Constitution Avenue, N.W.
Washington, DC 20240

**RE: September, 2010 Memorandum of Understanding, For EIS Activities Under NEPA for
Stream Protection Rulemaking: Notice of Termination**

I am Secretary of New Mexico Energy, Minerals and Natural Resources Department ("EMNRD"), a cooperating agency under the above referenced Memorandum of Understanding ("MOU"). The MOU sets forth the respective responsibilities of the Office of Surface Mining Reclamation and Enforcement ("OSM") and EMNRD in the development of an environmental impact statement ("EIS"), which is being undertaken in service of a rulemaking on stream protection. The rule is contemplated as a replacement for the 2008 stream buffer zone rule. Several other coal-producing states have entered into similar Memoranda of Understanding.

The first chapter of the draft EIS (Chapter 2) was shared with the states for comment in September of 2010. Chapter 3 was shared with the states in October of 2010. Chapter 4 was shared with the states in January of 2011. In each case, comment periods were exceedingly short. Additionally, reconciliation meetings were supposed to be held on each of the chapters, but only one such meeting was held. Following the receipt of state comments on Chapter 4 in January of 2011, OSM made no further contact with EMNRD. Since that time, OSM has significantly revised each of the chapters, and it is our understanding that several new alternatives are being considered, as well.

On two occasions, several of the cooperating agency states sent letters to OSM, expressing concerns with the EIS process and the states' role as cooperators. Those letters were dated November 23, 2010 and July 3, 2013, and we direct your attention to them. In the first letter, the states expressed concerns about the quality, completeness and accuracy of the draft EIS; the

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abbreviated timeframes for the submission of comments on draft EIS chapters; the reconciliation process; and the need for additional comment opportunities on revised chapters.

Following several fits and starts by OSM—largely due to the work of contractors that OSM had hired—in the July 3, 2013 letter the states requested an opportunity to re-engage in development of the EIS. The states asked for an opportunity to review revised draft chapters of the draft EIS; with expanded timeframes sufficient for comment; an opportunity to review any attachments and exhibits to the chapters; and a meaningful, robust reconciliation process. To date OSM has provided no further opportunities for participation by EMNRD or other cooperating agency states.

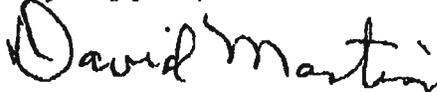
From the date that the MOU became effective, EMNRD has been able and willing to meet all of its responsibilities as a cooperating agency. Unfortunately, the absence of meaningful opportunities for EMNRD to participate in the EIS process has frustrated the purpose of the MOU and has undermined EMNRD's status as a cooperating agency.

Pursuant to Section C.2. of the MOU, EMNRD hereby provides notice that it is terminating the MOU as of thirty (30) days from the date of this letter. Further, we request that neither the New Mexico Energy, Minerals and Natural Resources Department nor its Mining and Minerals Division be identified by name or by logo as a cooperating agency within the draft EIS.

Termination of the MOU is not intended to imply EMNRD's disagreement with the eventual draft EIS or the eventual stream protection rule. EMNRD has not been provided with information sufficient to form a considered opinion on either the draft EIS or the eventual rule.

We hope that we are able to work with OSM on more successful ventures in the future.

Very truly yours,



David Martin

Cabinet Secretary

Energy Minerals and Natural Resources Department

State of New Mexico