

Western Interstate Energy Board/ WINB

December 15, 2009

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Mr. Joe Pizarchik, Director
Office of Surface Mining
South Interior Building, Room 233
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Director Pizarchik:

Steve Ellenbecker
Chairman

Douglas C. Larson
Executive Director

The following comments regarding the “Oversight Improvement Actions” announced by the Office of Surface Mining (OSM) on November 18, 2009 are submitted on behalf of the Energy Minerals Reclamation Committee of the Western Interstate Energy Board. The Committee consists of the Surface Mining Control Reclamation Act (SMCRA) Title V regulatory agencies in five Western states, Colorado, Montana, New Mexico, Utah and Wyoming. More than one-half of the nation’s coal is mined in these states.

We are concerned that the state-oversight actions proposed by OSM:

- Appear contrary to the objective of the Surface Mining Control and Reclamation Act (SMCRA) to protect the environment and the public;
- Embody a “one-size-fits-all” approach that fails to recognize the new problems the agency may create in one region when trying to fix a problem arising in another region of the country;
- Could redirect limited Western state and OSM resources into unproductive process- and enforcement- based accounting rather than measurement of environmental protection and reclamation success;
- Could jeopardize training programs necessary to accommodate a coming wave of retirements and stymie technical development within the Western states and OSM necessary to implement efficient 21st century regulatory programs focused on ensuring environmental quality; and,

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- Could undercut state primacy and the current productive cooperation between Western states and OSM.

We believe it is inappropriate to revamp a widely-acknowledged successful and productive oversight relationship between Western states and the federal government, to address an issue that has arisen in a few states in Appalachia.

The New Policy is Contrary to the Objectives of SMCRA

The primary purpose of SMCRA is to protect the environment and the public from the impacts of coal mining. Progress in meeting this objective is measured by OSM's current oversight process. The measured elements are off-site impacts (the number and degree of off-site impacts and the number and percentage of inspectable units that are free of offsite impacts), reclamation success (the number of acres for which bond has been released), and customer service. Appropriately, these are process outcome measures established under SMCRA. These data are reported by OSM and the Interior Department under the Government Performance Results Act.

Unfortunately, OSM's revised oversight proposal appears to redirect the agency away from environmental outcomes and back to the type of process measures that were replaced with OSM's Reg 8 during the Clinton Administration. We believe this is contrary to the primary objective of SMCRA -- environmental and public protection -- and should be reconsidered.

The New Policy Embodies an Inappropriate "One-size-fits-all" Oversight Process

OSM states that "On June 11, 2009, the Department of the Interior, the Environmental Protection Agency, and the Army Corps of Engineers entered into a memorandum of understanding (MOU) implementing an interagency action plan to significantly reduce the harmful environmental consequences of Appalachian surface coal mining. The MOU applies to surface coal mining operations in six States in central Appalachia: Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia." OSM then makes an apparently illogical leap from this problem statement to conclude, "Even though the MOU applies only to the six States in central Appalachia, any changes to our oversight policy would apply nationwide."¹

OSM goes on to state, "While our oversight policy fosters a cooperative effort with the states to achieve SMCRA's goals, coal field citizens and environmental organizations, particularly in central Appalachia, have voiced concern that the policy is not sufficiently comprehensive, that it is too deferential to the states, and that it fails to strike the proper balance between coal production and environmental protection." OSM thus acknowledges that the concerns have been raised primarily by coal field citizens and environmental organizations in central Appalachia, but makes no reference to any

¹ "Making Oversight of More Effective," OSM, first page.

concerns raised by citizens or advocacy organizations in any other parts of the country. Western states are interested in understanding the specific concerns, if any, that have been raised regarding state regulatory programs in the West so that they can be effectively addressed. Under the current open, transparent and cooperative oversight process used in the West, state regulatory authorities and OSM encourage the identification of potential problem areas which then help guide the annual oversight efforts.

The agency's planned "one-size-fits-all" approach is evident throughout its recently released document. For example, in its "Data and Technology" paper, OSM states that "Data must be uniform and standardized (i.e., normalized) to be useful." We believe that the most useful data are often that which relates to the on-the-ground conditions of a particular site. Data needed to address steep slope mining in Appalachia are different from data needed to address revegetation in arid environments found in coal areas of the West. The OSM's current drive for uniform data could result in information gaps and thus miss opportunities to address geographically-specific on-the-ground environmental issues.

We are disappointed by the federal government's "one-size-fits-all" reaction to address a geographically-limited problem. SMCRA (PL 95-87, Title 1, Sec.101, (f)) specifically recognizes the need to address different environmental issues in different mining regions. **We believe that a proposal that undoes effective policies in the West, and other parts of the nation, in order to address an issue raised in six states is an inappropriate federal response, and we urge you to reconsider this approach.**

The New Policy Reverts to Unproductive Process/Enforcement –Based Accounting Instead of Environmental and Public Protection

It appears that the approach to oversight announced by OSM could cause the agency to revert to the process/enforcement-dominated oversight methods last implemented during the George H.W. Bush Administration (1989-1993). States and OSM cannot afford to expend limited resources on this methodology previously shown to be both inefficient and ineffective. Additionally, environmental and public protection should not be jeopardized by the redirection of state and OSM resources into reviews of processes rather than environmental outcomes.

We believe that OSM's current Reg 8 governing oversight of state regulatory programs appropriately reflects the purposes of SMCRA and the goals of oversight. Reg 8 states: "...OSM oversight will focus on the on-the-ground/end-result success of the State program in achieving the purposes of the Act. Also, it will focus on identifying the need for and providing financial, technical, and other program assistance to States to strengthen their programs."

The New Policy Jeopardizes Training and Technology Transfer Programs Vital to Effective State and OSM Programs

In its paper “Oversight Inspections,” (also released with the November 18, 2009 “Oversight Improvement Actions”), OSM states that in order to pay for more oversight inspections, “...OSM may need to redirect resources from other program activities, including, but not limited to, abandoned mine lands reclamation, training, technology transfer, technical assistance, and special oversight studies.” OSM should specify where and what amount of resources could be diverted under this approach. OSM should also conduct and provide to state agencies and the public an evaluation of the impact on the environment of the diversion of such resources compared with the current allocation of the resources.

This is not an academic exercise. Many Western state programs are facing significant retirements and turnover. To be effective in reviewing permits and conducting inspections, new hires will need intensive training. States have relied almost exclusively on the OSM training program to provide that training. In the past fiscal year, 106 western state personnel have received training, along with 36 tribal personnel and 36 OSM personnel located in the West. The situation may be even more critical at OSM where a large portion of the work force has reached retirement age. Replacement staff will require significant training to bring their skills up to the level of existing Western state staff and OSM staff.

For the past two decades, Western states have urged OSM to fully fund the National Technical Training Program (NTTP) and place increased emphasis on building the technical capacity of Western state regulatory programs. This began with the Western States Technical Transfer Team and the Technical Innovation and Professional Services (TIPS) Program which enabled Western state regulatory programs to use state-of-the-art information technology. This effort has expanded to address sharing of technical information on the major reclamation issues in our region. One example of how extensively the West is dependent on TIPS is that in the last fiscal year, 54 western state employees received TIPS training along with 7 tribal representatives and 31 Western OSM employees. Without this federal support, Western state programs will not be able to employ technology to improve program efficiency and improve the quality of permit reviews and inspections that are critical to environmental protection.

The New Policy Undercuts State Primacy and Currently Productive Cooperation Between Western States and OSM

Many of the actions proposed by OSM, such as uncoordinated OSM inspections, independent OSM reviews of state-issued permits and the diversion of resources to activities not critical to environmental protection, appear to send state agencies a signal that OSM may not intend to be the same type of a partner in improving protection of the environment from the impacts of coal mining as it has been in the past. Rather, it appears

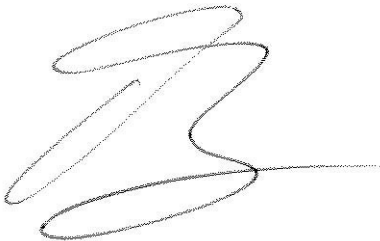
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that OSM might desire to be more of an auditor and adversary. The implementation of SMCRA suffered from such an adversarial relationship for more than 15 years until the agency made a conscious decision in the revision of Reg 8 in January 1996 to focus on environmental outcomes rather than process measures. This refocusing of oversight during the Clinton Administration aligned the efforts of Western states and OSM to achieve the mutual goal of environmental protection. Neither taxpayers nor the environment can afford a return to adversarial relations.

If OSM proceeds with nationwide application of the proposed changes, we recommend that the changes be implemented for a set period of time after which an independent evaluation would be performed in the West comparing the cost and level of environmental protection achieved during the test period with that achieved in the preceding period. In this review, the level of environmental and public protection should be measured according to environmental outcomes (e.g., number of off-site impacts) not process measures (e.g., number of inspections, number of permit defects), in furtherance of the purposes of SMCRA.

In the attachment to this letter, we have provided initial responses to specific points in OSM's proposal. If an extension of the comment period is granted, we may supplement these responses.

Sincerely,

A handwritten signature in black ink, appearing to be 'David Berry', written in a cursive style.

David Berry, Chair
Energy Minerals Reclamation Committee

cc: The Honorable Ken Salazar, Secretary
Nancy Sutley, Chair, Council on Environmental Quality
Wilma Lewis, Assistant Secretary, Lands and Minerals Management
Lori Faeth, Director of Intergovernmental Affairs

Attachment

Attachment – Comments on OSM Paper “Making Oversight More Effective; Oversight Improvement Actions”

In this attachment, the WIEB Energy Minerals Reclamation Committee offers initial comments on each of the “Immediate Actions”, “Policy Changes in Directive REG-8, Oversight of Regulatory Programs”, and “New or Reinstated OSM Policy Directives” proposed by OSM.

Immediate Actions

- “We have established two National Priority Review Topics for the current evaluation year (EY 2010): calculation of performance bond amounts and approximate original contour. [[National Priority Review Topics](#)]”

Comment: OSM establishing National Priority Review Topics is entirely within OSM’s purview under the existing oversight system. We hope that the assessment of national topics can still occur in concert with the successful oversight team concept utilized by some western states.

- “We will conduct more oversight inspections. [[Oversight Inspections](#)]”

Comment: Before OSM begins diverting limited resources from abandoned mine lands reclamation, training, technology transfer, technical assistance, special oversight studies and possibly mine plan reviews on federal lands in order to fund more oversight inspections, the agency needs to quantify: (1) the amount of resources that will be diverted in the West; (2) what AML projects in the West will not be funded; (3) the specific program cuts that will be made in training for OSM and Western state personnel; (4) the specific technical assistance/technology transfer activities planned in FY 2010 and FY 2011 that will be eliminated; and (5) whether Congressionally-appropriate state regulatory grant funds will be diverted. OSM then needs to explain the expected benefits to the environment from increasing oversight inspections compared with the expected costs to the environment from reductions in other areas.

- “We will take the measures necessary to articulate OSM’s authority to conduct Independent oversight inspections without prior notification to the state. [[Oversight Inspections](#)]”

Comment:

(1) OSM may already have authority to conduct inspections without state regulatory agency personnel present; however, this strategy may result in redundant regulatory functions, causing additional expenditure of limited state and federal resources.

(2) OSM will need to improve the pre-mine site inspection knowledge of its inspection staff so that they are capable of understanding the state-approved permits and the up-to-date developments at mine sites. Presently on joint inspections, Western state regulatory personnel provide OSM inspectors with information on a mine site pertinent to informed regulatory decisions.

(3) Will OSM quantify the costs and benefits of separate oversight inspections? If OSM pursues separate inspections in the West, we request that the agency establish data collection procedures to quantify the costs and benefits of separate inspections.

Specifically, we would ask OSM to track (a) the increased amount of in-office time state and OSM personnel spend in sharing information on specific OSM separate inspections; (b) the number and type of confirmed violations OSM inspectors find on separate inspections compared to violations found on joint inspections; and (c) the environmental damage resulting from violations discovered on the separate OSM inspections.

- “We will conduct more reviews of state-issued permits and state permitting procedures in the course of evaluating the National Priority Review Topics, as well as whenever oversight inspections or other information indicate that permits may be deficient. [[Review of Permits During Oversight](#)]”

Comment: OSM should not lose sight of the objective of the law which is protection of the environment, rather than implementing potentially redundant reviews of state permitting actions and inspections. Under the Government Performance Results Act, OSM and the Interior Department’s performance is measured by the collective outcome of actions by operators, state regulatory agencies and OSM. OSM success is not determined by a tally of allegations regarding possible state program errors. Rather, it is measured by how well the environment is protected from off-site impacts. To ensure that limited resources are well spent in the West, we ask that OSM track and compare the impact on the Western environment from increased agency reviews of state-issued permits with the impact of reduced activities in the areas of abandoned mine land reclamation, training, technical assistance and technology transfer.

- “We are evaluating our oversight data collection, analysis, and reporting requirements and methodologies to ensure that oversight data collected by OSM are appropriate for the purpose for which they are being collected. The evaluation also will focus on establishing procedures to ensure data accuracy, completeness, and consistency. [[Data and Technology](#)]”

Comment: It is appropriate that the current oversight data collection, analysis, and reporting requirements and methodologies be reviewed. We ask that this review be done in cooperation with Western states to focus on the data most important to evaluate how well the environment is being protected and to develop data collection and analysis systems that also meet state needs for continual program improvements.

- “We are pursuing development of a national geographic information system (GIS) to store, maintain, and analyze data and to report on the status of coal mining and reclamation activities. [[Data and Technology](#)]”

Comment: We support this effort, but urge that OSM ensure that the system meets the needs of Western states.

- “OSM, in collaboration with other Federal agencies, is conducting a remote sensing pilot project to explore and determine the best methods for acquisition and delivery of satellite image data, products, and services that will assist our regulatory and inspection programs. We will continue to develop our capabilities to monitor mining and reclamation operations using remote sensing technology, supplemented with selective onsite examination, as necessary, to

evaluate potential compliance issues. [[Data and Technology](#)]

Comment: We support this effort, but urge that OSM ensure that the system meets the needs of Western states.

- “We will ensure that each Field Office develops and implements an effective outreach plan that provides the public with opportunities to discuss the oversight process, including recommendations for additional review topics for the evaluation year and suggestions for improvements. [[Communication and Outreach](#)]

Comment: Western states strongly support effective outreach activities. We look forward to new ideas that can improve outreach.

Policy Changes in Directive REG-8, Oversight of State Regulatory Programs

“We will change our policy guidance and procedures and revise [Directive REG-8, Oversight of State Regulatory Programs](#), to improve our oversight process.”

Comment: The current Reg 8 is a product of extensive and beneficial negotiations between the OSM and the state regulatory programs. This occurred through the effective work of the States/ OSM Oversight Committee. Any revisions to Reg 8 should be considered and implemented through the cooperative process most effectively implemented by reconvening the Oversight Committee.

- “Establish a methodology for determining the number and type of oversight inspections to be conducted on a state-by-state basis. [[Oversight Inspections](#)]

Comment: We believe that the number and type of oversight inspections should be driven by state-specific and mining-location specific factors. These factors should be developed as part of the annual oversight plan worked out between the state and OSM. This plan should be the subject of public review and comment before being implemented.

- “Clarify that both random and focused methods of selecting sites to be inspected are acceptable, and to encourage use of a combination of both techniques when conducting oversight inspections. [[Oversight Inspections](#)]

Comment: Random and focused inspections are appropriate depending on the issues being addressed. These issues should be part of the annual oversight plan worked out between the state and OSM.

- “Establish a methodology for determining the minimum number of complete oversight inspections to be conducted annually in each state. [[Oversight Inspections](#)]

Comment: The minimum number of complete oversight inspections conducted annually should be part of the annual oversight plan worked out between the state and OSM and should be tailored based on the environmental issues of concern.

- “Clarify our authority and responsibility to conduct reviews of state permitting procedures and state-issued permits. [*Review of Permits during Oversight*]”

Comment: We believe the existing policy embodied in an October 21, 2005 letter from Department of the Interior Assistant Secretary Rebecca Watson is clear.

“In short, OSM does not possess concurrent or parallel jurisdiction over this matter [of permit issuance by states]. See *Pennsylvania Federation*, 297 F.3d at 318. (“Exclusive, in other words, means just that It doesn’t mean ‘parallel’ or ‘concurrent’”). OSM does not retain “veto” authority over state permit decisions. *Regulation Litig.*, 653 F.2d at 519 n. 7. Accord *Bragg*, 248 F.3d at 295. OSM intervention at any stage of the state permit review and appeal process would in effect terminate the state’s exclusive jurisdiction over the matter and frustrate the careful and deliberate statutory design. See *Bragg*, 248 F.3d at 295. It would encourage persons dissatisfied with state decisions to circumvent the very state laws and procedures that the Act insists states enact and maintain in order to exercise exclusive regulatory jurisdiction.”

- “Underscore the fundamental purpose of oversight, which is to ensure that states are effectively implementing, administering, maintaining, and enforcing approved state regulatory programs. [*Enhance Oversight and Corrective Actions*]”

Comment: We hope that OSM will keep in mind the ultimate goal of SMCRA which is protection of the environment. The agency’s oversight activities are not an end in themselves. Oversight activities are part of the process of achieving the goal of environmental protection.

- “Specify actions that we will take when we identify issues of significant scope and complexity or when a state fails to take timely action on a problem. [*Enhance Oversight and Corrective Actions*]”

Comment: We believe OSM currently has the responsibility to specify actions. We again caution the agency to focus on issues that impact the environment. The actions should be specifically targeted to address environmental issues of concern in a specific geographical area, and not be used as a pretext to revamp activities that are currently producing beneficial results in other parts of the country such as the West.

- “Improve how we deliver information concerning oversight evaluation of state programs. We will make the public evaluation file available online and post pertinent documents on an ongoing basis throughout the year as they are completed, rather than waiting until the end of the evaluation year. In addition, we will update the list of documents to be included in the publicly available state evaluation files. [*Communication and Outreach*]”

Comment: The development of an OSM online public evaluation file should be coordinated with Western state regulatory authorities.

- “Place greater emphasis on determining the causes of all off-site impacts. We and the states

will use that information to identify and initiate appropriate corrective measures to reduce the incidence of off-site impacts in the future. [*Measures of State Regulatory Program Success*]

Comment: We concur that the focus should be on off-site impacts. This is the clearest link to the overall goal of SMCRA to protect the environment.

New or Reinstated OSM Policy Directives

- “We will revise and reinstate [Directive INE-35, Ten-Day Notices](#) to:
 - provide guidance and procedures for implementing the Ten-Day Notice (TDN) process and correcting permit defects through the TDN process [*Review of Permits during Oversight*]; and
 - define the circumstances under which a state could request OSM to extend the time for the state to respond to a TDN, the maximum time allowed for extensions, and an elevated level of approval for further extensions. [*Oversight Inspections*]

Comment: We caution OSM that in the West a return to its TDN practices of the 1980s will be counterproductive. It will:

- Divert the attention and resources of OSM and Western state regulatory authorities to reviews of processes and away from environmental protection; and
 - Set the stage for reinstating an adversarial relationship between OSM and Western state regulatory authorities as OSM employees may view their jobs as the primary regulator evaluating individual state permits rather than overseeing the overall performance of the primacy state program in protecting the environment. OSM must avoid a system that focuses on process issues and potentially claim success by pointing to the number of TDNs issued. Rather, the focus should emphasize measurement of on-the-ground performance. Reinstating the failed TDN process of the 1980s is a step in the wrong direction.
- “We will reinstate policy and procedures, previously contained in rescinded [Directive REG-23, Development and Implementation of Action Plans](#), for development and implementation of process-oriented action plans to address programmatic issues encountered during oversight. [*Enhance Oversight and Corrective Actions*]

Comment: Action plans to address systemic problems in a state regulatory program that are causing on-the-ground environmental damage can be effective. However, the elements of any action plan must relate directly to environmental outcomes.

Requests for Comments

“We invite comment on the potential actions listed below. We also solicit suggestions for other ways of improving the effectiveness of oversight.”

- “Improving the citizen complaint process. [*Oversight Inspections*]

Comment: Western states would welcome the opportunity to work with OSM to consider more effective citizen input and citizen complaint processes.

- “New policy guidance for placing a condition on state regulatory program grants to require correction of issues if a state is not timely addressing and remedying problems identified during oversight. [*Enhance Oversight and Corrective Actions*]”

Comment: This proposal sets in motion a downward counterproductive spiral. Nearly all changes needed to improve Western state regulatory programs require greater resources. Threatening to withdraw some or all of the federal financial support of state regulatory programs, particularly in an era of state budget crises, will make it less likely that needed corrective actions will be taken. Withdrawing federal support will also provide a new reason for states to return regulatory programs to OSM which will result in substantially higher costs to the federal government.

- “Mechanisms that we can employ to ensure that states correct problems in a timely fashion. [*Enhance Oversight and Corrective Actions*]”

Comment: Western states request more information and specificity from OSM regarding the intent and details of this issue.

- “Rulemaking to require that permittees submit an annual status report, in electronic form, to the regulatory authority. The report would include a map, data, and narrative including, at a minimum, annual and cumulative data for:
 - the permit area;
 - the bonded area;
 - the disturbed area;
 - backfilled and graded areas;
 - areas where topsoil has been replaced;
 - areas that have been planted;
 - areas with Phase I bond release;
 - areas with Phase II bond release; and
 - areas with Phase III bond release [*Data and Technology and Measures of State Regulatory Program Success*]”

Comment: Much of the above data is contained in reports permittees make to Western state regulatory authorities. OSM should work with Western states to avoid duplicative regulatory requirements that undercut the credibility of both OSM and state regulatory authorities.

- “Collecting data on the number of permits issued and revisions approved annually for:
 - special categories of mining, such as mountaintop removal operations and steep slope mining (see 30 CFR Part 785 for additional detail);
 - permits incorporating variances from approximate original contour restoration requirements;
 - permits allowing mining within stream buffer zones; and
 - permits allowing mining on lands protected under section 522(e) of SMCRA, such as mining within 300 feet of an occupied dwelling or within 100 feet of a public road (see

30 CFR Part 761 for additional detail). [*Data and Technology*]

Comment: This OSM proposal seems to specifically target the concerns that gave rise to the interagency MOU. Western states may be affected by this proposal, depending upon how OSM implements the issue, and whether due consideration is given to the differences between the western and eastern context associated with these SMCRA requirements. We suggest that any such data collection effort should only be undertaken when there is a demonstrated on-the-ground environmental issue and the data collection should be focused on the geographic area and variables associated with the perceived problem area.

- “Implementing outreach enhancement tools such as:
 - providing educational opportunities to the public explaining oversight and how citizens can participate;
 - circulating draft state performance agreements or evaluation plans to the public for comment and addressing concerns in writing;
 - hosting public forums with focus groups to discuss specific concerns;
 - notifying interested parties of new information, meetings, and public participation opportunities via e-mail, face-to-face meetings, and telephone calls;
 - Sponsoring webcasts and using social networking tools. [*Communication and Outreach*]

Comment: Western states support improved outreach tools. However, OSM should support state outreach efforts not create duplicative outreach programs.

- “Improving the content and format of the annual state performance agreement or evaluation plan. We seek comment on how the format and content of these reports could be improved to provide information that would be more useful and meaningful to the public and other stakeholders. [*Communication and Outreach*]

Comment: This should be done in cooperation with Western state regulatory authorities.

- “Improving the content and format of the annual state evaluation reports. We seek comment on how these reports could be improved to provide information that would be more useful and meaningful to the public and other stakeholders. [*Communication and Outreach*]

Comment: Improvement of the content and format of annual state evaluation reports should be part of an annual work plan developed by OSM and each state. Once agreed upon, the annual work plan should not be unilaterally changed during the course of the year by OSM.

- “Providing more state program-specific information on the Internet. We seek comment on what information should be available on our website. [*Communication and Outreach*]

Comment: First priority should be given to assisting states in improving data presented on their websites. We are concerned that OSM will inevitably strive to make data on its

website uniform across all states, regardless of differences in mining environments or challenges a state program faces.

- “Rulemaking to improve the timeliness with which permittees apply for bond release. Options include the following:
 - Revise 30 CFR 780.18(b) and 784.13(b) to include application for bond release as the final step in the reclamation schedule approved as part of the mining permit.
 - Revise 30 CFR 800.40 to authorize the regulatory authority to initiate bond release in lieu of the permittee. The regulatory authority could either bill the permittee for the associated costs (advertisement, engineering, completion of forms, etc.) or retain a portion of the bond amount to cover those costs.
 - Establish an annual fee based on acres bonded under a permit.
 - Consider shifting the administrative costs associated with conducting regulatory inspections on areas that are eligible for bond release to the permittee if the permittee does not apply for bond release in a timely manner. [*Measures of State Regulatory Program Success*]”

Comment: Changes to bond release practices need to be rooted in an improved environmental outcome. Western states would be pleased to work with OSM to identify the environmentally beneficial outcome from changes in bond release practices. OSM should not change bond release practices until it demonstrates improved environmental performance would result from the change.

- “Developing additional measures to evaluate the effectiveness of state regulatory programs.”

Comment: “Effectiveness” should be measured by on-the-ground improvement in the environment.