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OBAMA ADMINISTRATION'S WAR ON COAL: THE RECENT REPORT BY THE OFFICE OF THE INSPECTOR GENERAL

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Thursday, January 9, 2014

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OVERSIGHT HEARING ON OBAMA ADMINISTRATION'S WAR ON COAL: THE RECENT REPORT BY THE OFFICE OF THE INSPECTOR GENERAL

Thursday, January 9, 2014
U.S. House of Representatives
Committee on Natural Resources
Washington, DC

The committee met, pursuant to notice, at 10:07 a.m., in room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Gohmert, Bishop, Lamborn, Wittman, Broun, Fleming, Thompson, Lummis, Duncan, Tipton, Labrador, Flores, Mullin, Daines, Cramer, LaMalfa, Smith, McAllister, Byrne, DeFazio, Holt, Grijalva, Cárdenas, Horsford, Shea-Porter, Lowenthal, and Garcia.

The CHAIRMAN. The committee will come to order. The Chair notes the presence of a quorum, and we have far exceeded that; I thank Members for being here early.

The Committee on Natural Resources is meeting today to hear testimony on an oversight hearing on "The Obama Administration's War on Coal: the Recent Report by the Office of Inspector General." Under Committee Rule 4(f), opening statements are limited to the Chairman and the Ranking Member of the Committee. However, I ask unanimous consent that any Member that wishes to have a statement in the record have it to the Committee before the close of business, and, without objection, so ordered.

Also, before I recognize myself for my opening statement, I want to welcome our newest member to the committee. Mr. Bradley Byrne was just sworn in yesterday and represents the 1st district in Alabama. I think he will bring more expertise, that is, on an issue that we spend a great deal of time on, the Gulf, with fishing and oil and gas issues. He has experience in the legislature in the past.

So, Mr. Byrne, welcome to the committee. We look forward to your input on the issues that we will take up.

Mr. BYRNE. Thank you, Mr. Chairman.

The CHAIRMAN. I will now recognize myself for 5 minutes for my opening statement.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. We are here today to discuss the U.S. Department of the Interior, Office of Inspector General's new report on the Office of Surface Mining Reclamation and Enforcement's rewrite of the 2008 Stream Buffer Zone Rule.

By now, everyone on this committee is very familiar with this rewrite, and it has been the subject of committee oversight and investigation for well over 2 years. In short, the administration has spent millions of dollars in secret, working on a new regulation that will put thousands of Americans out of work and will increase electricity costs. It is one of the most covert, but destructive, tactics in President Obama's war on coal.

Within days of taking office, the Obama administration discarded a rule that underwent 5 years of environmental review and public comment, entered into a secret settlement agreement with environmental groups to rewrite the rule in an unachievable timeframe, spent millions of taxpayer dollars and hired contractors to work on the rewrite, then fired the contractors when it was publicly leaked that the revised regulation would cost 7,000 jobs, and attempted to manipulate data to conceal the true economic impact.

In September 2012, the committee released a report based on our investigation that included internal documents and audio recordings obtained by the committee. The report exposed gross mismanagement of the rulemaking process, potential political interference, and widespread economic harm that the proposed regulation would impose.

Nearly a year and a half later, the IG has finally released their report. It includes similar findings. For example: according to the report, and I quote, "OSM employees involved in the project asked contractors to change a variable in the calculations." And further, "they knew that this would lower the potential job-loss numbers." It also states that, and I quote again, "the contractors and career OSM employees believed this change would produce a less accurate number."

It is clear, based on the IG report and our findings, that the Obama administration wanted to hide the real job-loss numbers. It was only after the job numbers were publicly revealed by the Associated Press that OSM asked the contractors to change the baseline number. The decision to change the baseline numbers appears to be politically motivated. It appears the Obama administration cared more about avoiding bad PR than presenting accurate job numbers.

The IG report also points out that despite OSM Director Pizarchik's testimony to this committee that the 7,000 job figure was just, as he said, "a placeholder", that, in fact, the numbers that went into that figure were, and I quote from the report, "not fabricated." This report directly contradicts the testimony of Director Pizarchik.

This IG report is further evidence of a grossly mismanaged rulemaking process that has gone on for 5 years and has cost over $9 million of taxpayer dollars, with absolutely nothing to show for it.

I must also, again, express my concern that Deputy Inspector General Mary Kendall is withholding information from Congress when the IG is charged with being an independent watchdog for Congress. The IG is refusing to provide Congress with an unredacted copy of this report, based on instructions by the Department of the Interior.

For example, large parts of a section of the report entitled, "Issues with the New Contract" have been blacked out. I have been

vocal about the mismanagement of the IG's office under the leadership of Ms. Kendall. As I said before, we need a permanent IG.

The redactions are also another example of the lack of transparency that we continue to see from this administration. OSM has refused to say where they are in the rulemaking process, or even when a draft rule on this will be released. And now the Department is preventing us from even looking at a section of this report that highlights likely problems with the new contracts and ongoing efforts to obscure job-loss numbers.

This is why the committee has passed legislation to save taxpayer dollars and American jobs by stopping the Obama administration from continuing its reckless and unnecessary rulemaking process. This legislation is needed now, more than ever, and it is my hope that the House will advance this legislation so that we can finally put an end to this wasteful and destructive rewrite.

At the end of the day, this issue is about protecting the jobs of thousands of Americans, and ensuring that families have access to affordable electricity. We must stand up and stop the Obama administration's attack on American jobs and American-made energy.

[The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF THE HON. DOC HASTINGS, CHAIRMAN, COMMITTEE ON NATURAL RESOURCES

We're here today to discuss the U.S. Department of the Interior Office of Inspector General's new report on the Office of Surface Mining Reclamation and Enforcement's (OSM) rewrite of the 2008 Stream Buffer Zone Rule.

By now, everyone on this committee is very familiar with this rewrite, and it has been the subject of committee oversight and investigation for well over 2 years. In short, the administration has spent millions of dollars, in secret, working on a new regulation that will put thousands of Americans out of work and increase electricity costs. It is one of the most covert, but destructive tactics in President Obama's war on coal.

Within days of taking office, the Obama administration discarded a rule that underwent 5 years of environmental review and public comment; entered into a secret settlement agreement with environmental groups to rewrite the rule in an unachievable timeframe; spent millions of taxpayer dollars and hired contractors to work on the rewrite; fired the contractors when it was publicly leaked that the revised regulation would cost 7,000 jobs; and attempted to manipulate data to conceal the true economic impact.

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It is clear, based on the IG report and our findings, that the Obama administration wanted to hide the real job-loss numbers. It was only after the job numbers were publicly revealed by the Associated Press, that OSM asked the contractors to change the baseline number. The decision to change the baseline numbers appears to be politically motivated. It appears the Obama administration cared more about avoiding bad PR than presenting accurate job numbers.

The IG report also points out that despite OSM Director Pizarchik's testimony to this committee that the 7,000 job figure was just a "placeholder," that the numbers that went into that figure were "not fabricated." This report directly contradicts the testimony of Director Pizarchik.

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This is why the committee has passed legislation to save taxpayer dollars and American jobs by stopping the Obama administration from continuing with its reckless and unnecessary rulemaking process. This legislation is needed now more than ever. It is my hope that the House will advance this legislation so we can finally put an end to this wasteful and destructive rewrite.

At the end of the day, this issue is about protecting the jobs of thousands of Americans and ensuring that families have access to affordable electricity. We must stand up and stop the Obama administration's attack on American jobs and American-made energy.

The CHAIRMAN. And, with that, I will recognize the distinguished Ranking Member for his opening statement.

STATEMENT OF THE HON. PETER A. DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thank you, Mr. Chairman. I guess I am going to say that I feel that there are—you know, we are the Committee of Natural Resources. And there are some very real natural resource issues involved in this investigation. Unfortunately, we are focused on what appears to me the hiring of an incompetent contractor, tremendous confusion about what the baseline should be on a rule that hasn't been implemented, and what that impact would have on the unknown rule, unpublished, and unseen, that is being developed by the Obama administration to revise the 2008 rule, which revised the Ronald Reagan rule.

To tell the truth, and I have asked staff, and they can't figure out either. I don't know, I can't even figure out how using the 2008 rule, which has been litigated by environmental groups for loosening the regulations of the Reagan rule, how using that as a baseline would show, you know, that the job losses would be mitigated. It would seem to me it would show higher job losses, because if you regulate less, and you destroy the environment more, and produce things more cheaply, you probably can make a case that more people would be employed.

And then, you know, if we went back to the Reagan-era rule, which had more restrictions to protect water quality, that would seem to me, if you use that as a baseline, you would have a different result. So I don't even know what the "there" is, or what we are trying to get to. I know you have a patented war on coal, war on coal, war on coal.

You know, I sit on Aviation, and if we were investigating the Hindenburg disaster, it would be the Obama administration's war on blimps and against hydrogen. So I would like to get to the real issue here, which is if you blow the top off a mountain, and you bulldoze it over into a valley which has a creek or a river in the bottom of it, and you bury the creek, but water still flows and all the leachate comes out of there, with these natural hazardous materials that have been exposed by, and unearthed by, the explosions and the bulldozing over into the creek, and the leachate goes downstream with horribly polluted water, that there are health impacts, there are environmental impacts.

I would really like to hold a hearing on that issue, and why the Obama administration hasn't been able to come up with an adequate revision to the rule. Maybe we should just go back to the Ronald Reagan rule. Maybe that would be a better way to go, I don't know. But it seems to me that is where this committee should be focusing its energies.

I mean we are focusing—it is just like after the Gulf Horizon explosion. I remember I sat here for hours and hours and hours over the change in one paragraph and the meaning of one word which didn't have an impact, because they changed from a date certain to something that actually would allow you to go back to leasing more quickly. I brought the dictionary, I read the dictionary, I said, "I don't even know why we are here." And that is the question today. Why are we here on this?

There was, I believe, incompetence in the contractor. I believe whoever was responsible for hiring an incompetent contractor should be disciplined or removed or whatever. We should be looking at the processes that are used to do that. I would like to know why there isn't a new rule, and when are we going to see a new rule, and what might the new rule encompass, and what protections might it provide for water quality and the population, you know, downstream in that State.

But none of that is before us today. We are going to go endlessly thrashing around over what is the difference between the 2003 rule and the 2008 rule and the proposed rule, which we haven't seen, which we don't know what it is, and what the potential job impacts might be, because there was one story, you know, that was written that purports to have calculated some job losses.

That is why we are here. And I have to say I think it is a waste of the taxpayers' money, and it is not the proper focus for this committee.

Thank you, Mr. Chairman.

[The prepared statement of Mr. DeFazio follows:]

PREPARED STATEMENT OF HON. PETER A. DEFAZIO, RANKING MEMBER, COMMITTEE ON NATURAL RESOURCES

Thank you, Mr. Chairman, and thank you, Mr. Knox, for being here today and for your office's investigation and report.

When it comes to oversight and investigations, the Majority of this Committee consistently misses the point.

In the aftermath of the Deepwater Horizon disaster, they did not call for an investigation into the causes of the explosion or the environmental impacts; instead the Majority spent years investigating the editing of one paragraph of one report on the disaster.

Today is no different. As the practice of mountaintop removal mining buries streams and poisons drinking water, the Majority has spent years investigating an unfinished Environmental Impact Statement for a rule that has still yet to be proposed.

The purpose of these hearings is not to gather information on the real economic or environmental challenges we face; these hearings are nothing more than political attacks on the Administration.

If the Majority was tasked with investigating the Hindenburg disaster, the title of the hearing would be: "The Obama Administration's War on Blimps."

It is Mr. Knox's job to make sure the Interior Department meets the highest ethical standards; it is the job of the Congress to manage this Nation's natural resources responsibly and protect the American people from harm. Mr. Knox is doing his job, we should start doing ours.

According to the Natural Resources Defense Council, more than 500 mountains, encompassing more than 1 million acres, have already been leveled by mountaintop removal mining. As part of this process, it is estimated that 2,500 tons of fuel-oil explosives are used a day, creating hundreds of millions of cubic yards of waste—and the regulations currently in place are plainly inadequate to protect families living near these mines.

The devastation inflicted by this practice on communities and the environment is truly scandalous; in contrast, Mr. Knox's report found no evidence of political interference in this rulemaking, no evidence to support the questionable job-loss figures used by the contractor and PLENTY of evidence that the contractor was simply not up to the job.

It is imperative that we get new regulations in place to protect the families of Appalachia, but the Interior Department hasn't even issued a proposed rule yet. Once that happens, Members of Congress, industry, and the American people will have ample opportunity to evaluate the proposal, provide comments and debate its merits—before a final rule is issued.

The investigation by this Committee is a politically-motivated distraction and should be abandoned. It's time to stop the sham hearings and massive document demands and start getting serious about protecting the American people from devastating mountaintop removal mining.

The CHAIRMAN. I thank the gentleman for his statement. I just remind him that we solved the blimp problem earlier this year when we passed the helium legislation on a bipartisan basis.

[Laughter.]

The CHAIRMAN. So I just wanted to make that point. There is progress here.

I want to welcome our witness today. We have with us Mr. Robert A. Knox, who is the Assistant Inspector General for Investigations of the Office of Inspector General within the U.S. Department of the Interior.

And, Mr. Knox, thank you very much for being here. Let me explain how that timing light works. Your full statement will be included in the record. However, if you could keep your oral remarks within the 5 minutes, and the way that works, when the green light is on you are doing very well. When the yellow light comes on, it means you have a minute to go. And, just like when you are driving, when the red light comes on, it means you are supposed to stop. But at least you can finish your thought. But if you could keep your oral remarks within that timeframe, we would appreciate that. And, Mr. Knox, you are recognized for your testimony.

STATEMENT OF ROBERT A. KNOX, ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Mr. KNOX. Good morning, Chairman Hastings, Ranking Member DeFazio, and members of the committee. Thank you for the opportunity to testify today about our Office of Inspector General investigation into allegations that the Office of Surface Mining, or OSM, pressured contractors working on an Environmental Impact Statement, or an EIS, and a Regulatory Impact Analysis, or RIA, to lower their estimate of potential job losses associated with a proposed rule to protect streams located near coal mines known as the Stream Protection Rule, and that OSM improperly ended the contract when the contractors refused.

We also examined the process that led to the calculation of a figure leaked to the media before these allegations surfaced, showing that some 7,000 jobs would be lost if the new rule were implemented.

If adopted, the proposed Stream Protection Rule would place more requirements on coal mining companies to protect streams near mine sites from the effects of mining on the environment. In 2010, OSM contracted engineering and environmental firms to work on the EIS and RIA which examine the environmental benefits of the proposed rule, as well as potential associated economic effects, including cost to the coal-mining industry and potential job losses.

In developing an RIA, an agency must establish a baseline, or reference, for comparing the new rule and determining the associated costs. To establish this baseline for the Stream Protection Rule, OSM and its contractors needed to look at the latest coal production data, as well as determine the rules and regulations that were in place and being enforced at the time.

In this case, there were two versions of a regulation, the Stream Buffer Zone Rule, that affected the baseline: one promulgated in 1983 and one promulgated in 2008. The 2008 rule was intended to replace the 1983 rule. But as soon as it was issued, the 2008 rule was challenged in court and OSM never directed the States to adhere to it in their mining programs.

We found that OSM initially directed contractors to use the 1983 rule to estimate coal production losses and job losses associated with the Stream Protection Rule. In 2011, after the contractors estimated that there would be high cost to the industry and significant job losses, OSM told the contractors that the 2008 rule should be applied in making the calculations. The OSM employees involved said they understood that this would lower the potential job-loss numbers.

The Office of Management and Budget, which examines these economic reviews, originally approved the application of the 1983 rule, but subsequently told us that using either the 1983 or the 2008 rule was acceptable. Clearly, however, the direction given to the contractor was not consistent, and, in fact, there was even disagreement within OSM about which rule to apply in the baseline analysis.

While we found that OSM only began to seriously consider terminating the EIS contract after the job-loss numbers were leaked,

interviews and internal communications revealed that OSM's dissatisfaction with the contractor's work product and overall performance was longstanding. Finally, rather than terminate the contract, OSM simply chose not to renew it.

While determining the accuracy of the 7,000 job-loss estimate in the draft EIS was not within the scope of our investigation, we did examine assertions that the data used to generate that figure was made up, and the process was flawed. The OSM Director testified before Congress that the numbers that went into the figure were merely placeholders, and were fabricated.

The subcontractor told us that he developed the numbers based on his review of historic mining data, his knowledge of mining regions, and what effects the proposed rule would have. Career OSM employees, however, questioned certain aspects of the contractor's methods, and the contractors themselves acknowledged that the project's rushed schedule restricted them from performing the full analysis they would have preferred.

In conclusion, our investigation revealed a poorly managed process that resulted in over $3.7 million in contract costs, over a year of effort, and no final EIS or RIA. The Department has advised us that it has taken action to correct the management of developing another EIS or RIA to include retaining a more technically capable contractor, forming a more robust project oversight team, and ensuring closer involvement of OSM senior leadership.

This concludes my testimony today. I would be happy to answer any questions members of the committee may have.

[The prepared statement of Mr. Knox follows:]

PREPARED STATEMENT OF ROBERT A. KNOX, ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS FOR THE OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Chairman Hastings, Ranking Member DeFazio, and members of the committee, thank you for the opportunity to testify today about our Office of Inspector General investigation into allegations that the Office of Surface Mining (OSM) pressured contractors working on an environmental impact statement (EIS) and a regulatory impact analysis (RIA) to lower their estimate of potential job losses associated with a proposed rule to protect streams located near coal mines (Stream Protection Rule), and that OSM improperly ended the contract when the contractors refused. We also examined the process that led to the calculation of a figure, leaked to the media before these allegations surfaced, showing that some 7,000 jobs would be lost if the new rule were implemented.

If adopted, the proposed Stream Protection Rule would place more requirements on coal mining companies to protect streams near mine sites from the effects of mining on the environment. In 2010, OSM contracted engineering and environmental firms to work on the EIS and RIA, which examined the environmental benefits of the proposed rule as well as potential socioeconomic effects, including costs to the coal mining industry and potential job losses.

In developing an RIA, an agency must establish a "baseline," or reference, for comparing the new rule and determining the associated costs. To establish this baseline for the Stream Protection Rule, OSM and its contractors needed to look at the latest coal production data, as well as determine the rules and regulations that were in place and being enforced at the time. In this case, there were two versions of a regulation—the Stream Buffer Zone rule—that affected the baseline: one promulgated in 1983 and one promulgated in 2008. The 2008 rule was intended to replace the 1983 rule, but as soon as it was issued, the 2008 rule was challenged in court and OSM never directed the States to adhere to it in their mining programs.

We found that OSM initially directed contractors to use the 1983 rule to estimate coal production losses and job losses associated with the Stream Protection Rule. In 2011, after the contractors estimated that there would be high costs to the industry and significant job losses, OSM told the contractors that the 2008 rule should be

applied in making the calculations. The OSM employees involved said they understood that this would lower the potential job-loss numbers. The Office of Management and Budget, which examines these economic reviews, originally approved the application of the 1983 rule, but subsequently told us that using either the 1983 or the 2008 rules was acceptable. Clearly, however, the direction given to the contractor was not consistent, and, in fact, there was even disagreement within OSM about which rule to apply in the baseline analysis. While we found that OSM only began to seriously consider terminating the EIS contract after the job-loss numbers were leaked, interviews and internal communications revealed that OSM's dissatisfaction with the contractors' work product and overall performance was longstanding. Finally, rather than terminate the contract, OSM chose simply not to renew it.

While determining the accuracy of the 7,000 job loss estimate in the draft EIS was not within the scope of our investigation, we did examine assertions that the data used to generate that figure was made-up and that the process was flawed. The OSM Director testified before Congress that the numbers that went into that figure were mere "placeholders" and were "fabricated." The subcontractor stated that he developed the numbers based on his review of historic mining data, his knowledge of mining regions, and what effects the proposed rule would have. Career OSM employees, however, questioned certain aspects of the contractors' methods and the contractors themselves acknowledged the project's rushed schedule restricted them from performing the full analysis they would have preferred.

In conclusion, our investigation revealed a poorly managed process that resulted in over $3.7 million in contract costs, over a year of effort, and no final EIS/RIA. The Department has advised us that it has taken action to correct the management of developing another EIS/RIA, to include retaining a more technically capable contractor, forming a more robust project oversight team, and ensuring closer involvement of OSM senior leadership.

This concludes my testimony today. I would be happy to answer any questions members of the committee may have.

The CHAIRMAN. Thank you very much, Mr. Knox, for your testimony. I will recognize myself; I have a few questions that I want to ask you, and then we will allow Members to have their questions.

I just want to say again, to remind everyone here on the committee, that in the last Congress, that Deputy Inspector General Kendall failed to comply with the congressional subpoena for documents, because the Department told her not to provide us with those documents. I dare say that we are seeing déjà vu all over again in this regard.

Mr. Knox, the committee requested a complete and unredacted copy of the IG's report, along with the attachments, interview notes, transcripts, and emails referenced in the report. Instead, the IG has provided only a redacted copy, and none of the interview notes, transcripts, or emails. Is that correct?

Mr. KNOX. Mr. Chairman, my understanding is that was your request.

The CHAIRMAN. Our understanding is that the Department has instructed your office not to provide a complete report and supporting documents, because it relates to the ongoing rulemaking effort. Is that correct?

Mr. KNOX. Mr. Chairman, no, I would say that's not correct. They haven't instructed us to refrain from releasing anything to this committee.

They have asserted a privilege, and that is with respect to documents and information related to the ongoing rulemaking on the Stream Protection Rule. Their assertion to this information is pre-

decisional, and, therefore, privileged. The only information that was redacted by our office pertains to the ongoing rulemaking.

The CHAIRMAN. Well, when you talk about privilege, has the President asserted executive privilege in this case?

Mr. KNOX. Mr. Chairman, not to my knowledge.

The CHAIRMAN. So the issue here is because they are making rules, that we should not get access to that.

Let me tell you the problem I have with that. The problem I have with that is the 2008 rule was promulgated in August of 2008, and in early spring, the new administration came in, they essentially negated that rule, which was hardly in effect.

Now, my first question to OSM is, "Why did you negate the rule," which, of course, they have never told us why. And so, to me, there is a direct connection, as we go through, as they are stumbling through this whole process, if they are having problems, in other words, with initial contractors, and then in the redacted report, which we should put up, by the way, let's put up the redacted report, which is under the title of, where is that? "Issues with the New Contract," that is what is redacted.

Now, if the issue and the problem we are having here with drafting a new rule is with the contractors, and they fired the contractors, and now they have new contractors, and your report is issued to us that you are having problems with that, shouldn't we know that?

And let me ask you this way. What are the problems with the new contractors?

Mr. KNOX. Mr. Chairman, we are not, the OIG that is, is not asserting a privilege in this situation. We don't feel it is our privilege to waive, however.

And I understand that our general counsel did consult with staff from the committee, and discussed this matter in advance of this hearing.

The CHAIRMAN. Well, I knew that you couldn't tell me what the problems are, and that was probably more a rhetorical question.

But I just have to tell you my problem is that this whole process is involving problems with the contractor, the initial contractor, and they fired him. And now they apparently have problems with the new contractor. And then the redacting of that information on a rule that was never really put in place, that had not even had an opportunity to be fully implemented, I think that is information that the American people, through this committee, should have.

So, I will just simply say I have a real problem with the Acting IG because she is the one that apparently made that decision. And I will just say that I don't think this issue is going to go away in the future.

And, with that, I will recognize the Ranking Member for his——

Mr. DEFAZIO. Mr. Chairman, I am going to pass at this point, and go to Mr. Holt, if he is ready, or Ms. Shea-Porter was here first. Sorry.

The CHAIRMAN. You have to pick somebody.

Mr. DEFAZIO. OK, yes, I know. Mr. Grijalva was next.

Mr. GRIJALVA. I am going to pass.

[Laughter.]

Mr. DEFAZIO. I will be back. I have got to do an interview. So I will be back.

The CHAIRMAN. Well, after much discussion, I will now recognize Mr. Holt for his questions.

Dr. HOLT. I am not speaking on behalf of Ms. Shea-Porter, Mr. Grijalva, or Mr. DeFazio, but I thank Mr. Knox for coming to testify today.

Let me start with a few questions in series. Is there any investigation of a regulatory assault on the economy? Was there any evidence of a war on jobs? Is there any evidence of a war on coal?

Now, these may sound like odd questions. But I am asking them because these are the titles of various investigative hearings this committee has held over years now, looking into this matter on the Stream Protection Rule. This was all about a war on the economy, it was all about a war on coal, it was all about a war on jobs.

In reviewing the report, or let me ask you, in your report, it seems evident that the management of this contractor by the OSM certainly could have been better handled, but it is evident that the contractor was unprepared to complete the work necessary to prepare the analysis for the rule. Am I reading that correctly?

Mr. KNOX. Congressman, our report identifies failures by the contractor and failures by the government in the progress of the performance of that contract.

Dr. HOLT. What is getting lost in all of this is the need for better environmental protection for coal-mining communities. Mr. DeFazio began to get at this.

My colleagues on the other side of the aisle have focused, tried to focus, on two things. And it is clear that they are opposed to any regulation of the mineral extraction industry, and that they are willing to use any amount of this committee's time and resources to blame the administration. What we are trying to get to here is a good rule to protect the people who live and work in this environment.

Here is my basic question. Do you think your report is complete? Do you think it is adequate? Do you believe that we need a further series of congressional investigations on this matter?

Mr. KNOX. Congressman, I would have to respond to that by saying that we undertook this investigation for two purposes. The first was to pursue allegations that some improper influence was applied to decisionmaking, and that a contractor might have been directed, based on improper influence, to make changes to their calculations.

The second part was that the contractor was treated unfairly or improperly in accordance with our procurement rules.

Our investigation is complete, with respect to those two allegations, and we did not find evidence to support either.

Dr. HOLT. I think that says it. That answers the questions that I have now. And I will yield back my time. Thank you.

The CHAIRMAN. I thank the gentleman. I will now recognize the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. And thank you for being here today, sir.

We have had a lot of hearings in this room, especially in my 9 years here in Congress, and some of them had to do, going back

to 1998–1999 in the Clinton administration, regarding Deepwater Royalty Relief Act leases by the Clinton administration. And there was a woman named Sylvia Baca that was involved in that process for the Clinton administration. And when we had a report in here from a man that investigated that, he said he had not even questioned Sylvia Baca about why those leases failed to include the price-controlled thresholds, which, as some of my Democratic friends have pointed out in prior hearings, cost this Nation billions and billions of dollars. And then she ends up going to work for British Petroleum.

And so, when I had asked at a prior hearing, "Have you talked to Sylvia Baca about why she left out those price threshold languages in the leases," we were told, "Well, she went to work for British Petroleum, so she is not within our grasp to get her testimony now." And then we find out that this administration, under Secretary Salazar, hired her back.

Now, I have noted from your report that you talked to her on July 18th of 2012. So I am asking you, sir. Have you, or someone finally talked to Sylvia Baca about her duplicity in leaving out price threshold language that made billions and billions of dollars for big oil, then going to work for big oil, and now coming back to work for the Obama administration? Have you talked to her, or do you know of anybody that has asked her about those leases that cost this country billions for her employer that she soon went to?

Mr. KNOX. Congressman, we interviewed Ms. Baca in the course of our investigation pertaining to the allegations that we were investigating. And——

Mr. GOHMERT. But which allegations were they? Was that with regard to the language she left out of the price thresholds?

Mr. KNOX. No, sir. It was pertaining to the questions of whether undue influence had been applied to the contractor to change the rule for calculation of job loss; and second, to determine whether there was some mistreatment of a contractor.

Mr. GOHMERT. I know the President has talked so much about his disdain for big oil, and yet he brings somebody back from big oil that helped big oil make billions and billions of dollars to the detriment of this country. Do you anticipate you or someone in Interior asking her about those, since she is now back working for this administration?

Mr. KNOX. Congressman, I don't have a current allegation or investigation pertaining to the scope that you are describing. And so I do not anticipate a discussion with her about that matter at this point.

Mr. GOHMERT. Mr. Chairman, it sounds like we are going to need to pursue this further to give them the responsibility to pursue this matter.

But let me ask you, you mentioned earlier there was a disagreement within OSM about which rule to apply, the one from 2008, the one that was done before that, and also note that on July 17, 2013, Department of the Interior went back to District Court, again agreed with the environmental plaintiffs groups, asking the Federal District Court to vacate the 2008 rule. The same request was denied in 2009 by Federal District Court that told the administration then that granting the request to vacate the rule "would

wrongly allow the Federal defendants to do what they cannot do under the APA: repeal the rule without notice and comment."

So, could I ask you, who are the two sides that were disagreeing over which rule to apply?

Mr. KNOX. Well, in the course of our case, and the very many people that we spoke to, what emerged was two points of view on whether the 1983 rule or the 2008 rule——

Mr. GOHMERT. That is right. And I am asking you, my time is running out, so I have to get to the point, what were the two groups?

Mr. KNOX. Generally speaking, the contractors associated with the work believed the 1983 rule should be applied. And, generally speaking, the leadership of OSM believed the 2008 rule should be applied. And there were some outlier voices within OSM that believed that the——

Mr. GOHMERT. That sounds very much like the political appointees of President Obama wanted to apply the new rule, and the career people there wanted to apply the old rule. And I would suggest they need to quit costing this country millions of dollars and apply the rule that the court said they have to apply. Yield back.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from California, Mr. Lowenthal. The gentleman passes. Mr. Garcia?

Mr. GARCIA. I will yield back the time, Mr. Chairman.

The CHAIRMAN. Mr. Cárdenas?

Mr. CÁRDENAS. I yield back. Thank you, Mr. Chairman.

The CHAIRMAN. Ms. Shea-Porter?

Ms. SHEA-PORTER. Thank you. I think the American public would be really interested to hear that what we are actually talking about, ultimately, is it OK to dump mining waste within 100 feet of a stream. Is it OK to pollute, regardless of what decisions have been made? I think the American public, especially people who live near that, would be astounded that we are discussing this part of it, instead of going back to the crux of it, which is there is something wrong with dumping mining waste in streams and close to streams. And I just want to make sure that we all know what we are actually arguing over here.

So, I just have one question about this whole process, if you would answer it, please. Was there any evidence at all that there was political interference here?

Mr. KNOX. Congresswoman, there was no evidence uncovered in our investigation of political interference.

Ms. SHEA-PORTER. OK. Thank you, and I yield back.

The CHAIRMAN. The Chair recognizes the gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman, for having this hearing. Mr. Knox, thank you for testifying today. I would like to ask you some questions about your investigation into statements made by Director Pizarchik in November of 2011.

In an answer to a question from me, Director Pizarchik stated that the 7,000 job-loss figure was a placeholder, and had no basis in fact, and based on no evidence. In fact, let's look at a short clip of his testimony on the screen, here.

[Video shown.]

Mr. LAMBORN. There you see he looks pretty confident in his statements that these numbers are made up. However, your report lays out how the numbers were not pulled out of thin air; they were based on assumptions provided by the staff, and were the result of considerable deliberation by the contractor.

For example, the report describes how he was told, after the numbers were leaked, that they were based on "good engineering practice and best professional judgment." And yet, months later, in front of this very committee, he said that the numbers were made up. Would you agree with me that Director Pizarchik's testimony before this committee was not accurate?

Mr. KNOX. Congressman, I don't feel I am in a position to opine on the accuracy of his testimony.

What I can say is that when we spoke to Director Pizarchik in the course of our investigation, he expressed to us that he had been led to believe the things he said here before the committee were true, and that he was less aware of the process the contractor had undertaken to develop the numbers that were leaked.

Mr. LAMBORN. Isn't the fact that a senior political appointee may not have provided accurate information to Congress something serious that the Inspector General's office should look into?

Mr. KNOX. Congressman, our investigations are undertaken based on allegations of misconduct, of complaints made by concerned citizens about matters affecting the Department of the Interior. And, to date, we don't have a clear case of a member of our Department deliberately misleading the Congress.

Mr. LAMBORN. Well, it appears that Director Pizarchik was either incompetent in not understanding the word "placeholder," at best, or he changed his tune over time to fit a political narrative, resulting in misleading testimony to Congress, at worst. Shouldn't his actions be the basis of further investigation?

Mr. KNOX. In the course of our work, the explanation we received from Director Pizarchik and the other people we spoke to during the course of the case indicated that there were reasons for him to believe that the 7,000 figure was a placeholder, as it was said, that the contractor themselves might have introduced that word into the description of that number, but that actually there was more depth to the analysis that derived the final number of estimated job-loss figures.

Mr. LAMBORN. Mr. Knox, isn't it really true, and this is how it appears to many of us, that the original contractor was fired because the loss of 7,000 jobs is politically damaging? In other words, this is a case of killing the messenger because he carries bad news.

Mr. KNOX. Well, sir, we looked very carefully at the circumstances surrounding the decision not to extend the contract of the contractor. The fact is, the contract with that contractor was not, in fact, terminated. It had run its course, and the option periods that were available for the government to exercise were not exercised.

Mr. LAMBORN. Thank you. Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman. Mr. Grijalva.

Mr. GRIJALVA. Thank you. Mr. Knox, my colleague, Mr. Gohmert, suggested that the Obama administration, their political appointees, were at odds with OSM career civil servants over the

baseline issue. Is that an accurate characterization of that situation?

Mr. KNOX. I am sorry, Congressman. Could you repeat part of that question? Who did you believe was at odds?

Mr. GRIJALVA. That the political appointments from the Obama administration and the career civil servants, that that is where the baseline issue was at debate, the appointees wanting to insist on a baseline criteria and the civil service career folk not. Is that accurate?

Mr. KNOX. No, sir, that would not be accurate, Congressman. The investigation found that, within the OSM, there really was only one politically appointed person, the Director of the Office of Surface Mining, involved at all. And, in fact, he was not driving the move toward using the 2008 rule for developing the baseline. It was, in fact, all the other OSM members involved in that were career civil service employees.

Mr. GRIJALVA. So, actually, the debate, for lack of a better word, was within the career folk at the Department?

Mr. KNOX. Congressman, that is accurate.

Mr. GRIJALVA. Thank you. The Bush administration and undoing the Reagan rule, in terms of stream protection, that waiver, I assume, created a significant windfall for the coal companies in the area, at the expense, as Ms. Shea-Porter said, to, potentially, the health and the welfare of the region in general.

Is it prudent, if this committee were to continue to chase its own tail on this particular issue, would it be prudent to also look at full implementation of the Reagan rule, or full implementation of a rule that we have yet to see that is being prepared with this administration, and what that would do to the bottom line, in terms of the mitigation that these coal companies would have to pursue in order to meet the rule, and to guarantee some protection of both health and welfare downstream to residents and to the environment in general? Would that be a prudent exercise?

Mr. KNOX. Congressman——

Mr. GRIJALVA. We are talking about job losses. I want to see profit gains and what that would mean if even the Reagan rule was fully implemented.

Mr. KNOX. Congressman, I have no opinion about whether that would be a prudent course or not. Our focus of our investigation was to determine whether any improper influence, any political influence, was applied to the decision——

Mr. GRIJALVA. OK, so let me——

Mr. KNOX [continuing]. On the rule.

Mr. GRIJALVA. Quick question, probably yes or no. And, I will try not to ask you a question you can't answer.

The contractor that we are categorizing as a victim of political interference here, their contract was not renewed because of cause, and that cause being performance.

Mr. KNOX. Congressman, in the course of our case, we looked at various factors and uncovered evidence that the government was unsatisfied with contractor performance long before the 7,000 job-loss figure was leaked to the press, and that they were addressing issues of performance.

It is also true that the contractor was unable to, in the cure notice proceeding, deliver a draft EIS/RIA to the government, as expected, by the deadline.

Mr. GRIJALVA. And we have established in your previous responses that there was no improper undue influence and political heavy-handedness applied to the contractor in terms of that contractor's work product.

Mr. KNOX. We uncovered no evidence of that.

Mr. GRIJALVA. And is your office confident that the investigation is adequate for the purpose of looking into the allegations of the Stream Buffer Rule, and how it was being worked? And can this committee gain anything by continuing to investigate what has been investigated?

Mr. KNOX. Sir, we believe our investigation is thorough and complete, pertaining to the allegations we sought to clear up, and that involves whether or not political pressure was applied improperly, or whether the contractor was abused.

Mr. GRIJALVA. I appreciate that and yield back. Mr. Chairman, thank you.

The CHAIRMAN. Thank you. I thank the gentleman, and recognize the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. I would like to yield my time to the lady that understands our energy independence, and that is the gentlelady from the Equality State, Wyoming. Mrs. Lummis?

Mrs. LUMMIS. Well, I thank the gentleman from South Carolina for yielding me his time.

Mr. Knox, thank you for being here. We know one of the missions of the Office of the Inspector General is to investigate waste and to ensure taxpayers are getting what they pay for.

Last year, Director Pizarchik informed this committee that the Office of Surface Mining, at the time, had spent $8.6 million to revise the 2008 rule: $6 million was for contractors and the rest for OSM staff. Do you consider $8.6 million to be excessive, particularly considering the rule has yet to even be proposed?

Mr. KNOX. Congresswoman, I have not seen the elements of cost, and couldn't opine on the reasonableness of them. I am aware that they spent $3.7 million to pay for services acquired from the first contractor. But, beyond that, I am unaware of the other expenses.

Mrs. LUMMIS. Do you know how the $8.6 million compares to the total cost of the 2008 rule, including proposing and finalizing it?

Mr. KNOX. Congresswoman, I do not.

Mrs. LUMMIS. Well, I can elucidate this: $5 million over 5 years, as opposed to $8.6 million over 4 years, and without actually now proposing a rule. Given that information from Director Pizarchik is 9 months old, do you know how much has been spent to present date?

Mr. KNOX. I do not.

Mrs. LUMMIS. Mr. Knox, past the issue of spending, the IG report also identified a number of management problems within OSM for how it managed the contractors and rulemaking process. Is that correct?

Mr. KNOX. That is correct, Congresswoman.

Mrs. LUMMIS. The Department said in its response to the IG report that OSM appears to have learned important lessons from the experience with the previous contractor, and appears to have implemented important changes to improve its management of that project. Do you agree with the Department's statement, that management problems within OSM have been corrected, and that the new contracts are being properly managed?

Mr. KNOX. Congresswoman, we have not undertaken an effort to examine those ongoing contracts. And so I do not have an opinion as to whether they actually implemented those changes or not.

Mrs. LUMMIS. Why is there an entire section of the IG's report on issues within the new contract?

Mr. KNOX. The investigative team that looked into the allegations here, the subject of our investigation, interviewed people who had roles in both the previous contract and the current contract. And so, information was obtained that they felt was relevant to report in our Report of Investigation pertaining to that ongoing contracting effort. The problem, of course, is the assertion of privilege by the Department in releasing that information at this time.

Mrs. LUMMIS. What steps are you going to take, on an ongoing basis, to assure the problems have been corrected?

Mr. KNOX. At this point, the Office of Investigation doesn't have a plan to pursue any continuing review of this Stream Protection Rule process. But I certainly am willing to talk to my colleagues on the audit side about maybe scheduling something.

Mrs. LUMMIS. Given that, how can we be sure that more than 5 years into the process, the Department is not continuing to waste taxpayer money with its effort to rewrite a 2008 rule that itself cost millions to issue, and has never had a chance to go into effect across the country?

Mr. KNOX. Well, there were a lot of problems with the previous contract that related to requirements development and timeliness, the pressure of time that the government imposed on the process, that contributed to the failure of the contractor in the end.

Mrs. LUMMIS. Do you know if there have been any changes to OSM senior management, as a result of these problems, or in response to the IG report? Or is the same senior management that oversaw this earlier rewrite still overseeing this new effort?

Mr. KNOX. Congresswoman, I am aware that one key person, the former counselor to the Director of OSM, has left the OSM and gone to a different agency. So that is one change that I am aware of. But, other than that, I am not really aware of any changes.

Mrs. LUMMIS. Well, Director Pizarchik is still there, right?

Mr. KNOX. That is correct.

Mrs. LUMMIS. Can OSM really do a better job of managing this process and being a steward of the taxpayer money, if the same senior management is in place? And how can you help alleviate future problems here?

Mr. KNOX. Well, I think that the experience of weaknesses in contract processes are not new to our Department or to the government, generally, and that the OIG has a role in helping understand where we could have done better, and communicating that information to the Department. To that end, we can certainly assist the

OSM in understanding good procedures for project management and contract administration. Perhaps that is a start.

Mrs. LUMMIS. I thank you, Mr. Knox. I also thank the Chairman for his indulgence. Thank you.

The CHAIRMAN. Thank Mr. Duncan, because he had the time. So should I continue on my side, or——

Mr. DEFAZIO. Yes, go ahead.

The CHAIRMAN. The Chair recognizes the gentleman from Colorado, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman, for convening the hearing today, and talking and taking a closer look about the Obama administration's war on coal.

In January of 2012, President Obama visited my home State of Colorado to tout what he considered to be an all-of-the-above energy approach. Unfortunately, the President was merely paying lip service to the American public. And in June of 2013 he announced his climate action plan. The President's plan, unfortunately, does not represent a true all-of-the-above energy approach. Instead, it picks winners and losers, wages war on coal, and generally is a continuation of the costly, ineffective policies of his first term that will ultimately drive up the costs for consumers and destroy thousands of jobs.

My Planning for American Energy Act represents a true all-of-the-above energy plan that embraces all of America's vast energy resources, and provides American families and businesses much-needed relief from the outrageous energy cost without killing good-paying jobs. Rather than pursuing a true all-of-the-above energy plan, this administration continues to circumvent Congress and churn out job-killing regulations targeting the coal industry.

Just yesterday, the EPA published another rule for new power plants that will have dramatic economic consequences. President Obama has acknowledged that some of these regulations will cost our economy over $1 billion annually, and will increase energy rates for families and small businesses.

A recent economic analysis found that just one of the Obama-proposed rules targeting the coal industry could destroy more than 500,000 jobs, increase electricity prices by a whopping 20 percent, and cost the average American family an extra $1,400 a year.

To make matters worse, the OIG report we are discussing today revealed a taped meeting recording the Office of Surface Mining counsel encouraging the contracting company to use different hypothetical variables to arrive at lower job-loss numbers for the Stream Buffer Zone proposed rule. When the vice president of the company pushed back, counsel replied, stating, and I quote, "This is not the real world. This is rulemaking."

This is out-of-touch mentality that is inexcusable and, unfortunately, this administration fails to recognize that these rules and regulations advancing an anti-coal agenda have significant real-world economic consequences for the American people.

Mr. Knox, thank you for taking the time to be able to be here. You testified in your report that you found that the Office of Surface Mining initially directed contractors to use the 1983 rule to estimate the coal production losses on job losses. You then testified after the contractors estimated there would be high cost to the

industry and significant job losses, that OSM told the contractor to use the 2008 rule that was never implemented to lower the potential job-loss numbers.

Based on your investigation, do you believe that there was a willingness by certain agency employees to effectively cook the books in order to lower the potential job-loss numbers?

Mr. KNOX. Congressman, our investigation found that when the decision by OSM was made to use the 2008 rule for calculating the baseline, there was awareness among the decisionmakers that it would have the effect of lowering the estimated job-loss figures.

But our investigation did not discover their motivations behind that decision. There was no evidence that it was politically motivated. It was stated that the reasoning behind using the 2008 rule was based simply on trying to identify the best possible EIS product in accordance with the National Environmental Protection Act.

Mr. TIPTON. We might tend to disagree on that. I think that, you know, it looks as though they were attempting to cook the books, just simply based off of some of the potential outcome of the loss of job numbers.

Did your investigation reveal any emails exchanged between the Office of Surface Mining Director and the counsel after the Associated Press reported the draft Environmental Impact Statement could kill those 7,000 jobs?

Mr. KNOX. Yes, sir. We did.

Mr. TIPTON. Would you summarize the content of those emails?

Mr. KNOX. I don't have all of them before me, but there is one that I am aware of here that I do have, dated January 27, in the morning, and it is an email from the counselor, Dianne Shawley, to the Director, in which the title of it is, "Loss of Coal Jobs at 7,000." And the body of the email states, "We should fire the EIS contractor, and put that on the front page!"

Mr. TIPTON. "We should put that on the front page."

Did you review the recording that was made discussing the baseline?

Mr. KNOX. I am sorry, could you repeat that?

Mr. TIPTON. The February 1, 2011 meeting discussing the baseline, did you review that——

Mr. KNOX. We did.

Mr. TIPTON [continuing]. Recording? And can you summarize the content of that tape?

Mr. KNOX. The summary indicates that there was a discussion between the contractor and the government about the project, generally, in the context, of course, of following the January 26 leak of the jobs number. And, essentially, the discussion centered on how to move forward in the project, concerns that the government had about the contractor's performance, and the use of the 2008 rule for baselining, as opposed to the 1983 rule.

Mr. TIPTON. OK, and this is when the comment was made, "This is not the real world, this is rulemaking"?

Mr. KNOX. That is correct, sir.

Mr. TIPTON. And so that goes back, I think, to the first question. Was there some political motivation on this?

Mr. KNOX. We found no evidence of political motivation. But this was an example of where the contractor was alerted very late in

the period of performance about a pretty significant change to the expectation.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the Ranking Member.

Mr. DEFAZIO. I thank the Chairman. Mr. Knox, so you just restated no incidence of political misconduct was found.

Mr. KNOX. Yes, sir.

Mr. DEFAZIO. OK. But you recount the testimony of the former Office of Surface Mining regulatory support division chief, who was later relieved, that his testimony makes it sound like it was all political. Did you have complete authority to review all of his communications and email? And did you find any substance to support his allegations?

Mr. KNOX. His complaints did indicate that he perceived political influence as part of the reasoning for the 2008 rule to be directed to be used. But we found no evidence to corroborate that others had the same perception. And, in fact, the independent decisions of other OSM members, aside from the counselor to the Director, to use the 2008 rule lent credibility to it being just a reasonable, scientific choice.

Mr. DEFAZIO. Yes, and I have got to say I still don't quite understand the rationale between 1983 and 2008. But that is not your expertise, and we may get into that if we do another hearing on this.

Yesterday some Senators sent a letter to Janice Schneider. She is nominated to be Assistant Secretary for Land and Minerals Management, which oversees the OSM. And in that letter they said, "The report shows the political appointees at OSM ordered career staff and subcontractors to change the method for estimating job losses largely for political purposes." Is that a true statement?

Mr. KNOX. Congressman, as I have stated, we did not find evidence that there were political motivations behind the decision to make the changes. We found that the decisions were made, and we reported how they impacted the contractor and the contractor's performance. But we did not find evidence of political influence.

Mr. DEFAZIO. And what about the contracting process? I mean it seems to me that an incompetent contractor was hired. I will just read a couple of quotes here.

West Virginia Department of Environmental Protection, and this significantly affects them, wrote the draft analysis from the contractor "showed very little depth of understanding," and that, "the characterization of this document as junk is not just one person's observation."

We had similar analysis from another State where it would have a major impact, Wyoming. Kathy Ogle, Geological Supervisor, "The analysis is insufficient for a document of this importance." And then one from Virginia, another State where it would have a significant impact, "I would certainly hope the EIS is not going to be developed based on this inaccurate and incomplete information contained in this document."

It seems to me like they hired someone who was totally incompetent and not properly overseen. Now, what are we going to do about that? That, to me, is a real question for inquiry. I don't like wasting money.

Mr. KNOX. Congressman, what we observed, what we discovered during the course of our investigation, was that this contract was awarded to a small and disadvantaged business, probably to accelerate the timeline of award. And, although procedures were followed, they chose a contractor that had limited experience in EIS process and really none in a programmatic EIS, such as this.

The timeline for the award period of performance was very restrictive. And it seemed that the requirements that the government expected were not well-defined from the beginning. Changes such as even using the 2008 rule, as opposed to the 1983 rule, came very late in the period of performance, and afforded the contractor a limited amount of time to make changes.

There were, I could go on and on, but there were——

Mr. DEFAZIO. But, I mean, given the fact that the contractor was essentially removed for incompetence, or reason, not political influence, did they suffer any financial consequences? Did they rebate some of the money that had been paid, since they produced a product that was junk, according to impartial officials from another State?

Mr. KNOX. Congressman, the contractor agreed to the terms and conditions the government came to, in terms of how the contract was ended. They were not terminated for convenience or for default. We simply allowed the period of performance to expire, and the contractor was paid for all the services they had rendered to date.

Mr. DEFAZIO. Well, I have to tell you I have an overall concern with government contracting, generally, when we don't require performance, and people don't have some flesh on the line. And coming from the State of Oregon, which has the worst performance in the entire United States in hiring a contractor for its online services for the health care bill, the shop, I mean, I just really think that somehow we need to construct contracts that have benchmarks. And if you don't reach a benchmark at a certain point, then you are out or there are going to be penalties or withholding. And you keep going with these benchmarks. You don't give somebody a bunch of money, tell them to go out and do it, and they come back with what is described as junk, and they say, "Oh, yeah, well, in the end, we just let the contract expire and they kept the money." That is just not, as a taxpayer, I don't like that. I have got to tell you.

Thank you, Mr. Chairman.

The CHAIRMAN. Time of the gentleman has expired. The Chair recognizes the gentleman from Montana, Mr. Daines.

Mr. DAINES. Thank you, Mr. Chairman. Mr. Knox, thank you for being here today. I represent the State of Montana. And the coal not only powers over 50 percent of our homes and businesses, but coal mining creates badly needed jobs on our tribal reservations, in addition to mining off the reservation.

In fact, on Saturday, I was at the Northern Cheyenne reservation, as well as a Crow reservation. I asked the chairman of the Crow Tribe, Darrin Old Coyote, I said, "What are your three top priorities?"

He said to me, "Jobs, jobs, and jobs," as they face a 50 percent unemployment rate on the reservation. And then he added this. He

said to me, and these are not words coming from the Chairman of this committee, or from any of our witnesses today; these are coming from the words of the chairman of the Crow Tribe of Montana, he said, "A war on coal is a war on Crow families."

This rule that we are seeing is another part of this President's war on coal. We know that coal is one of our cheapest forms of electricity, and is a major job-creator. And, yet, just in the last 18 months, 32,000 people in the coal industry have lost their jobs.

People like the Crow people in Montana want to be self-sufficient. They want to control their own destiny. But the Federal Government too often gets in the way. The Crow people, they want to grow jobs. They don't want to see their Federal Government grow with these overreaching regulations.

Mr. Knox, I would like to ask you about the time constraints that were in place for developing this new Stream Protection Rule. The 2008 rule underwent years of careful study. But here, as I have looked at the report and listened to your testimony, that doesn't seem to be the case. In its report, the IG found that the EIS process was quite rushed. Would you agree with that?

Mr. KNOX. Congressman, yes, I would agree that it was a short timeline.

Mr. DAINES. I think it was from May, late May of 2010, to November 19, 2010, if I read the report correctly.

And did the IG's report attribute some of the problems between OSM and the contractors due to rushing this timeframe?

Mr. KNOX. Congressman, yes. We feel, and the government felt, the contracting officer, in fact, felt, when they made their decision to allow the period of performance to end, rather than take a termination action, that the OSM had a part in the performance failure by this contractor.

Mr. DAINES. And so the contractors, I think, said they did not have enough time to complete a full analysis.

Mr. KNOX. That was true. In part, they would have undertaken different techniques, if they had more time.

Mr. DAINES. So the question, I think, for this committee is why was the OSM so rushed here, when the agency spent years working on the prior rule?

Mr. KNOX. We, through interviews, heard from some witnesses saying that they felt compelled to adhere to the court decision where the decision to set aside the 2008 rule was made, with a promise by the Administration, by the Department, that they would be able to deliver a draft Stream Protection Rule, I believe, by February 28, 2011.

Mr. DAINES. So it sounds like it was because of the settlement that the OSM had agreed to with these environmental groups who had challenged the 2008 rule.

Mr. KNOX. I believe that was the driving force, yes, Congressman.

Mr. DAINES. So, would it be fair to say that that closed-door settlement perhaps determined the timeframe for OSM's rulemaking in this case?

Mr. KNOX. Pertaining to the first contract, and the matter that we investigated, that seemed to be the case.

Mr. DAINES. Well, I find it very troubling here, then, that the OSM's actions are being determined by court settlements with habitual litigants. And I think this particular situation just demonstrates a broader theme with the Obama administration, where the agency agrees to settle, and then is bound by the arbitrary and unrealistic demands of these same organizations.

We see the same thing with the ESA litigation. We see the same thing in the timber industry. The process is not transparent, and is not how rulemaking is supposed to be conducted.

I, frankly, was very disappointed, I recognize the term "privilege" was used in this rulemaking process. But when we, here in Congress, are charged with some oversight responsibilities to make government more efficient and effective, and get reports that are redacted to look like this, and we are trying to get to the bottom of what is going on here, I find that very, very troubling, when the terms "privilege" are being used here to, what I see, hide what is going on here, in terms of this rulemaking process.

And here is the bottom line. It is not only hurting the way government operates. But, importantly, it is hurting jobs and it is hurting taxpayers. I yield back my time.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from North Dakota, Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman, and thank you for being here, Mr. Knox.

Before I ask a couple questions, I want to set a couple of things straight, because prior to coming to Congress I spent nearly 10 years as a coal mining regulator in North Dakota, and I know a fair bit about the Stream Buffer Zone Rule and its history. And a couple of things that some of my colleagues said earlier bother me, and I want to straighten a couple of them out.

First of all, not getting to a predetermined, preferred answer does not constitute incompetence by a contractor. One of my colleagues claimed that we should be trying to get at a good rule to protect streams. Another one of my colleagues suggested that we shouldn't be allowing—or that it shouldn't be OK to dump mine waste into streams, and that is what we should be focused on. And I agree that we should be focused on those things, except that there are good rules that already protect streams. I don't remember any time in my 10 years as a coal mining regulator that dumping mining waste into a stream was OK.

Do you know if that was approved under the 1983 rule or the 2008 rule, which, by the way, the 2008 rule is stricter than the 1983 Stream Buffer Zone Rule. Do you know?

Mr. KNOX. Congressman, it is out of my area of expertise.

Mr. CRAMER. Sure. Well, it is well within mine, and I can assure you that it was never OK, and it is not OK under the 1983 or the 2008 rule to dump mining waste.

I want to follow up a little bit on the Ranking Member and then my friend from Montana's line of questioning regarding the constricted timeframe for the EIS. In your investigation, did you ever examine how the primary contractor was chosen? Because there seems to be a lot of angst aimed at the contractor, and yet that contractor was chosen, I assume, by OSM through some process. Did you look into that at all?

Mr. KNOX. We did look at some of that. They are designated an 8(a) contractor, a small, disadvantaged business concern. And they were selected through a limited competition that was held between a handful of 8(a) companies that were deemed eligible to compete for this work, and they were found to be the preferred technical choice.

Mr. CRAMER. Now, isn't it true that it was the contractor that really insisted that they needed to hold full scoping sessions in order to comply with the NEPA requirements, and it was really the OSM staff that wanted to, you know, sort of cut the corners, if you will? Is that accurate, that it was, in fact, the contractor who wanted to extend the process to meet NEPA, and it was the OSM staff that wanted to confine it?

Mr. KNOX. Congressman, the contractor certainly wanted to pursue the public hearings. But also there was, I believe, our contracting officer representative, who was there, for large reason, because of their experience in NEPA, felt the same way.

Mr. CRAMER. Then I just think I want to push in at least one other line of questioning here that I think Mr. Tipton was on earlier relating to OSM Director's counsel, Dianne Shawley, and some of what I consider to be pretty disturbing statements, especially related to that the agency was engaged in what was "not the real world, this is rulemaking."

That is sort of something that bureaucrats get accused of a lot, and some people think, "Well, certainly they are not that insensitive to what is really happening in the world." The world is not really that theoretical, and yet it sounds to me like she believes it is. Does this seem cavalier to you, for somebody in a position like that, to be overseeing a billion-dollar rulemaking that is going to impact, you know, thousands of American jobs, whether it is 7,000 or some other number? I mean, doesn't that seem a bit cavalier for counsel to——

Mr. KNOX. Congressman, I don't have an opinion about what meaning she meant when she used those words. What I would say is that our investigation found that the decision by OSM to use the 2008 rule was based on their belief that, since it was the rule of law, it was the appropriate rule to use at the time.

Mr. CRAMER. Since I have just under a minute, I want to then pursue the issue of OSM employees, that were, in fact, embedded in the teams, as I understand it. According to the contractor, anyway, they were well embedded into the various working teams that worked on the EIS and the RIA, and that, in fact, they provided many of the written materials that showed up in the EIS, in various chapters of the EIS, which then, of course, they later criticized.

But am I wrong in that? Because I don't see any of that reflected in your report. And yet, I understand from the contractor, that was, in fact, the case.

Mr. KNOX. Our investigation, of course, was looking at two points, was there undue political influence, improper influence, and was the contractor treated unfairly with the end of their contract. We didn't look at this issue you raise.

Mr. CRAMER. My time has expired. Thank you.

Mr. BISHOP [presiding]. Thank you. Mr. Byrne, we welcome you to this committee. You have your first opportunity to ask questions, if you would like to. You are recognized for 5 minutes.

Mr. BYRNE. Thank you very much. Mr. Knox, I am the newest Member of the House, newest member of the committee, and perhaps I want to ask some questions of you that may seem elementary and obvious. But, forgive me, I need to learn.

You asserted, with regard to the redacted document, a privilege. And I don't know what that privilege is. Could you tell me what the nature of the privilege is?

Mr. KNOX. Congressman, I am not an attorney, in fact. So I am following the advice of my counsel at the OIG. We, the OIG, is not asserting a privilege. But——

Mr. BYRNE. I understand that. But you are saying that there is a privilege that somebody has, that you feel like you all can't waive. So do you even know what the title or the concept of the privilege is?

Mr. KNOX. Yes. My understanding, sir, is that the concept of the privilege relates to administrative rulemaking, and that while it is ongoing, that the agency engaged in the rulemaking might have a privilege as to the information associated with that ongoing process.

Mr. BYRNE. And who has the privilege? And, therefore, who has the ability to waive or not waive it?

Mr. KNOX. My understanding is that the Department would have the privilege and the ability to waive or not waive it.

Mr. BYRNE. Has your office asked them to waive the privilege?

Mr. KNOX. We have not asked them, to my knowledge, to waive the privilege. We don't feel it is our privilege to waive, and we feel like if it is information that this committee needs, that it is a matter that the committee should direct to the Department.

Mr. BYRNE. So you don't think it is the function of your office to carry your investigation to the point to at least ask for the waiver of privilege so you can get to the point of having information that could potentially be important to rendering your judgment?

Mr. KNOX. Actually, sir, I don't feel qualified to answer that question. I don't think we encounter this kind of stuff all that often. It seems like we have had a couple of instances before this committee. But in my personal professional career, this is perhaps the first time I have dealt with it.

Mr. BYRNE. Well, I may be new to the Congress, but I have practiced law for over 30 years, I am used to the assertion to privileges and the redaction of documents. That is a pretty heavily redacted document, from my experience. Do you know who redacted the document, the exact name of the person or the office?

Mr. KNOX. Congressman, our general counsel, Mr. Bruce Delaplaine, actually effected the redaction. Or, let me say, reviewed all the redactions that were proposed by the Department, and rejected many that he didn't feel directly related to the ongoing rulemaking, and actually restored information to what has been delivered to you when he felt it was legitimately the right thing to do, and just redacted those things that were deliberate process information.

Mr. BYRNE. And do you know, and you may not know, but do you know what basis he used to make the decision about what is an allowable redaction and what is not an allowable redaction?

Mr. KNOX. Congressman, I would probably say the wrong thing if I tried to stumble my way through that, so I would have to say no, I don't know what process he used, except that it was only information that actually related to the ongoing deliberative process-making.

I would say there is a second prong to our reasoning behind this willingness to recognize the Department's exercising of a privilege, and that is simply that our future access to information from the Department is related to that. The Department abides by the Office of Inspector General's need for access to information, and the IG Act, actually, that provides us that access.

But they do recognize that there are instances where they have ongoing processes that are privileged. And when they release that information to us, they expect us to respect it. The fear we have is if we don't show that respect, we may lose the access that we need in our investigations and our audits in the future.

Mr. BYRNE. I want to make sure I understand the answer to the last question. You have a fear that if you go too far in pushing back on the assertion of privilege, that you may not get information that you need to perform your function from a Department of the United States Government?

Mr. KNOX. No, sir, I didn't mean to leave you with that impression.

Mr. BYRNE. Well, what is the fear?

Mr. KNOX. We don't have a fear at all.

Mr. BYRNE. Well, you used the word "fear." What did you refer to?

Mr. KNOX. I misspoke. We have a concern that if we actually don't recognize the privilege that they assert, with our own validation that the information actually falls, in this case, within this deliberative process-making, that we would not, in the future, have access to the information that the Department may have regarding an ongoing process.

Mr. BYRNE. Well, I do agree with some of the Members' assertions that the substance of the policy, or the substance of the rulemaking is important. But to the people of the United States, the process is also important. And transparency of process is critical to the functioning of our government. And it does give the appearance, in a heavily redacted document like that, that we don't have true transparency. So I would urge you and your office to think more and think a little harder about when and how redactions like that are allowed.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN [presiding]. I thank the gentleman very much for his line of questioning, and the Chair recognizes the gentleman from Virginia, Mr. Wittman.

Dr. WITTMAN. Thank you, Mr. Chairman, and thank you, Mr. Knox, for joining us today. I want to go to page 17 of your report. And it states, "Pizarchik acknowledged the probability that both OSM staff and the contractor made some bad judgments".

The report goes on in quite a bit of detail about the shortcomings of the contractor. It is short of detail about the problems within OSM and the decisionmaking there, and where problems were there. Can you give me a little more detail about Director Pizarchik's statements about OSM and what your findings were about what happened within OSM, as far as his decisionmaking process, and where things went awry?

Mr. KNOX. Congressman, are you referring to the decisionmaking regarding the contractor and the contract, or regarding the decision to use the 2008 rule?

Dr. WITTMAN. Actually, both. If you could, comment on both.

Mr. KNOX. Well, my understanding, from our investigation, is that the Director was really not that involved. He was being briefed by his counselor, but the counsel was much more engaged in the process, and was really making the decisions and briefing the Director, who did agree that the use of the 2008 Stream Buffer Zone Rule was the right rule to use for a baseline determination.

Dr. WITTMAN. So, from that standpoint, you are saying that, essentially, internally the direction was going to the contractor, and that the problems that arose from that were a result of actions within OSM?

Mr. KNOX. Well, the contractor was informed in the summer that they should use the 1983 rule for building their calculations, and proceeded with that understanding until the meeting on February 1, 2011. So that was a considerable period of time. And by February 1, the contractor was expected to have a draft EIS delivered to the government on the 23rd of February, some 22 days later. So that is really where the problem started.

Dr. WITTMAN. OK. Let me ask you, going off on a side part of that line of questioning, in your report you detail how the former regulatory support division chief told you of receiving an email from Director Pizarchik's counsel in the last week of January 2011, essentially saying that there was a push for him to find a way for contractors to produce more favorable job-loss numbers. And he went on to say that he felt like Director Pizarchik and his counsel were trying to cook the books.

My concern is, how did that come about from that individual's perspective? How did he feel that that was happening within the agency? And what is your reaction to the information provided to you by the former regulatory support division chief?

I am trying to look at the dynamic there for somebody saying, "Hey, I feel like they are cooking the books." And what was your reaction to that? Is that something that normally occurs in that process, if somebody denotes that reservation or that concern, and then what the reaction is within the agency to that?

Mr. KNOX. Well, our investigation looked very carefully at the assertions made by that person, and used those assertions in each of the interviews that followed with other members of the OSM staff and contract employees. There was no one who really felt the same way, perceived meetings in the same manner, and saw this sort of political influence that the person reported to us in his interview.

So, we were left, well, with a report that informs the Department, the Bureau, and this Congress of our findings.

Dr. WITTMAN. Let me ask you. In your experience in doing these sorts of investigations, is it a normal course in those findings to see a career employee make these kind of accusations against a political appointee?

Mr. KNOX. I would say that in my experience it is not unusual that a career employee might make a complaint, or in this case, make a statement.

But in this case, also, you have to look at, you know, the whole pattern of work that this person had been involved in, and the performance of that work. He had made communications to the contractor that were reversed; he had been slow to inform the contractor of decisions that needed to be made, even when asked; and had consistently along the way informed the Director that all was well, and things were fine, he had control of the circumstances.

Dr. WITTMAN. Let me ask you one last question. Do you have any reason to believe that the former regulatory support division chief was not telling the truth?

Mr. KNOX. We don't have any reason to believe anyone wasn't telling the truth. I think we have a series of different perceptions and experiences, based on their part of this whole process.

Dr. WITTMAN. All right, very good. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman. The Chair recognizes the gentleman from Oklahoma, Mr. Mullin.

Mr. MULLIN. Thank you, Mr. Chairman. Thank you, Mr. Knox, for being here. You know, it might come as quite a surprise that Oklahoma has a very vibrant coal industry. We have over 5,000 direct and indirect jobs in the coal industry. And so it is quite concerning to me, because those jobs are in my district, which is considered a pretty poor district, that the President openly says that he has a war on coal. I mean he is the one that declared it. Yet it is an important energy source that we have.

And so, entertain me a little bit by allowing me to understand what it is exactly you are investigating.

Mr. KNOX. Our investigation, sir, was focused just on the question of whether, in the process of developing a Stream Protection Rule, the decision to use the 2008 Stream Buffer Zone Rule was made for political purposes. And then, second, whether the contractor, who refused—it was alleged——

Mr. MULLIN. So why would you even consider it being politically driven? I mean that seems pretty obvious to me when he declared a war on coal, and now, all of a sudden we have to investigate it. I mean, I would be curious how many dollars have the taxpayers paid out for an investigation, when it is, you know, open that he doesn't favor coal.

Mr. KNOX. I am sorry, Congressman——

Mr. MULLIN. My question is do you know how much you guys have spent, so far, how many man hours you have spent in investigating something so obvious?

Mr. KNOX. I don't have a calculation of the man hours.

Mr. MULLIN. Well, let me switch gears then, just a little bit. Did you prepare your statement, your testimony?

Mr. KNOX. Congressman, yes, I did.

Mr. MULLIN. You prepared it yourself?

Mr. KNOX. I did so.

Mr. MULLIN. So, in your belief, do you believe this administration does or doesn't have a political-driven agenda on coal, considering that he stated a war on coal?

Mr. KNOX. Sir, I really don't have an opinion on the matter.

Mr. MULLIN. OK. Do you know how much we spent, totally, or total, conducting these studies on this buffer zone?

Mr. KNOX. I am only aware of the $3.7 million figure, $3,700,269, that was paid to this contractor for the——

Mr. MULLIN. To this one, or the first one?

Mr. KNOX. To the first contractor.

Mr. MULLIN. Do you know how much we spent on this current contractor?

Mr. KNOX. Maybe we are not talking about the same thing. I am talking about the first effort of the Stream Protection Rule.

Mr. MULLIN. OK. On the first contractor that was awarded the contract, it has been brought up several times that the contractor was fired because of incompetency. And so, we are having to go back and redo something that he did.

I am a contractor, myself. And every time I enter a contract, I have to be bonded. And if I fail to do it right, and someone else has to come in behind me to redo it, then my bond is called. And I have to either do it myself, or I lose my bond on it. No action was taken on this, for the first contractor?

Mr. KNOX. Congressman, this contractor was not terminated for poor performance. They——

Mr. MULLIN. Well, I have heard you say that over and over again, Mr. Knox. But everybody's perception, because of what the first reports were, that this administration was putting out, was that he was fired, that this contractor, "he," I am using that in a loose term—but this contractor was fired because of incompetency. That is what we keep hearing. That is what we heard from the get-go.

Mr. KNOX. I understand that. But I am here today to tell you that, in fact, no termination was made on that contractor's performance.

Mr. MULLIN. So then, part of your investigation maybe should be why was that used to begin with, then. Why was this administration putting that out to begin with, if it wasn't politically driven?

Mr. KNOX. The Office of Inspector General for the Department of the Interior is focused on matters that affect the programs of our Department. And investigating the——

Mr. MULLIN. Well, Mr. Knox, I heard you say that. But the first question I asked you was what you were investigating, and you were saying if it was politically driven or not. Did you not state that?

Mr. KNOX. That was one of our——

Mr. MULLIN. OK. So the first reports that came out about this contractor that was no longer able to do this contract was perceived by the public, because of the words that this administration was putting out, that he was fired for incompetency. Now your investigation has shown that he wasn't actually fired for being incompetent, or the contractor wasn't, but because the contract ended. So

that alone shows that it was politically driven, in just my simple thinking. Mr. Knox, I appreciate your time.

And, Mr. Chairman, I yield back.

The CHAIRMAN. The time of the gentleman has expired, or, the Chair recognizes the gentleman from California, Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. I appreciate Mr. Knox taking part here today.

When we look at our whole energy portfolio for our Nation here, we look at the various options that we have, or maybe we don't have. You know, hydropower is important, important to us in northern California. Yet the ability to build new hydro, new storage, has been severely curtailed by environmental and other concerns. And, indeed, there is a movement underway to remove hydro projects in northern California.

Other alternatives, nuclear power in California, the San Onofre Plant is being closed. And the prospect of building much more nuclear power in the United States or anywhere, you have Fukushima in Japan, that certainly put a damper on that.

And so we look at coal, providing to our Nation somewhere around 40 percent of the entire energy grid for electricity. And yet we have the war on coal, we have investigations like this, we have regulations, as my colleague, Mr. Cramer, mentioned a while ago on the 2008 rule, which is actually more restrictive on stream buffers versus the 1983 rule. I don't quite understand what is going on with the changing of the rules like that, or the move to do so.

As well, what are alternatives going to be in the future, if coal, presently a very large chunk of the Nation's energy supply, and how that is going to be replaced with other alternatives that people keep pushing, like wind, which, I guess a waiver was just made recently to allow the continued chopping-up of eagles and other raptor birds, et cetera, by those plants—and then solar, which, you know, might be OK, but it is quite expensive, as long as the incentives keep coming. And then you have the pall over that of things like Solyndra over solar.

So, it is really difficult for me to understand where our energy grid is going to be powered by, if this continued effort to shut coal down, and the jobs that go with that, the economy that goes with that, is allowed to be perpetrated.

But going back to what my new colleague from Alabama, Mr. Byrne, was speaking of, I find it incredible that your office would feel like you have to play nice with the people you are investigating, in order to have the flow of information either now or in the future be available. So you really feel that if you don't play nice in particular ways, that in the future, or even under current investigations, that they may not make information available to you?

I think the American public would find that really interesting. You feel like there is a possibility they may just clam up on you?

Mr. KNOX. Congressman, it is one factor that we are aware of, that the Department, if they have a privilege to certain records, and we don't respect that privilege, they may choose not to release that sort of information to us in the future. It has never happened, it is just one consideration.

But I think, more fundamentally, we have come here today providing our report with redaction. But I should point out that the

redaction is really only about a page-and-a-half out of a very long report of information pertaining to issues on an ongoing process, ongoing administrative process. It is not at all focused on the center of our investigation or, I believe, the purpose that I was asked to come here to testify about today.

Mr. LAMALFA. Certainly. It may be a small part, it may be not a big deal, and no real scope, but I think that it just overturns—for me, as a new Member—that there is the concept that information would be so privileged that it is not even available to you, even behind closed doors, to help you doing your investigation, and that all of this should be above board in the light of day for the American public, because the American public is who pays us, and who pays them, and they are expecting to have that power to go back to the people that are being the watchdogs, not just within agencies that have behaved poorly in a lot of cases.

So, Mr. Chairman, I think that might be a further cause for follow-up in the future, that this sort of privilege can be abused and even felt that it is warranted. So I appreciate that line of questioning by my colleague, as well. So, with that, I will yield back my time. Thank you.

The CHAIRMAN. Good. The Chair recognizes the gentleman from Utah, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman. With all due respect, I would like to yield my time to the Chairman.

The CHAIRMAN. OK. I thank the gentleman for yielding.

Let's kind of put things into perspective here, just to make sure that—to capsulize everything that has been asked of you, Mr. Knox.

Prior to January 26, 2011, the direction that the contractors were given was to use the 1983 baseline and the main reason why is because that is the one that had been in effect. The 2008 baseline had not been in effect. In fact, it was in court. Is that correct?

Mr. KNOX. Mr. Chairman, that is correct.

The CHAIRMAN. OK. Now——

Mr. KNOX. Except for—you mentioned January?

The CHAIRMAN. OK.

Mr. KNOX. The contractors, I don't believe, were alerted to this change until the beginning of February.

The CHAIRMAN. Well, OK. I should probably explain why January 26th was so important. And it was important because that was when AP leaked the story of the job loss.

Now, there were discussions then about the competence of the contractors. And your IG did say that OSM was certainly involved because of the confusion and the rush. All that was true. Is that correct?

Mr. KNOX. That is correct, Mr. Chairman.

The CHAIRMAN. All right. Now, you were charged with finding if there was any political motivation, which is a very hard thing to prove, obviously. But prior to the leak of the AP, you stated, I think in the IG report, there is no discussion of firing the contractor. Is that correct?

Mr. KNOX. That is correct, Mr. Chairman.

The CHAIRMAN. All right. And then, regarding the baseline, there is no discussion that the baseline was incorrect. In fact, the con-

tractors were given the direction to use a 1983 baseline. But that changed after January 26. Is that correct, by your IG report?

Mr. KNOX. Mr. Chairman, that is correct.

The CHAIRMAN. All right. Now, I understand it is very difficult to draw political conclusions. But when you look at the evidence where a contractor was given direction to use this baseline, because that was the only one that you could probably get solid facts from, and then after a leak comes out that, boy, using that baseline means that there will be some job loss, then all of a sudden there are changes, one has to just come to maybe a conclusion that you didn't unearth. Let me put it that way; let me be soft on this issue.

But when you look at the facts, it is hard to come to another conclusion to suggest that, especially given this administration's, I guess, announcement—not announcement, or actions of war on coal, it is pretty hard to come to a conclusion that where there is smoke, there is not some fire.

Now, I recognize and respect the fact that you didn't come to that conclusion, based on your interviews. But when you just look at the timeline, it is hard to not say that there may be some interference in there. And I will yield back to the gentleman from Utah.

He yields back his time. The Chair recognizes the gentleman from Pennsylvania, Mr. Thompson.

Mr. THOMPSON. Thank you, Chairman. Thanks for hosting this hearing.

Mr. Knox, thanks for being here. Thank you for your service. I mean just, initially, a statement. The role of the OIG, to me, anyway, is about transparency, and transparency leads to, if not good government, better government. And so, all of the report redactions, I find that greatly troubling, given at least my perception of what the OIG should be about. Greatly troubles me, not just in the area of natural resources, but what this means for all areas.

First of all, I want to make sure that we understand the timeline when OSM changed the baseline. OSM awarded the Environmental Impact Statement contract in May of 2010. In December of 2010 they were still insisting on using the 1983 rule. Is that correct?

Mr. KNOX. That is correct, Congressman.

Mr. THOMPSON. Thank you. Then, after the job-loss figure was leaked in January 2011, OSM all of a sudden changed course and decided to use the 2008 rule. In December 2010, OSM said to use the 1983 rule. In January 2011, the job figure is leaked. In February 2011, almost immediately, OSM demands the contractors use a 2008 rule and moves to terminate the contract. Is that sequence of events right?

Mr. KNOX. The sequence of events is essentially correct, Congressman, except they did not move to terminate the——

Mr. THOMPSON. They did not renew. And I appreciate that, in your testimony, that clarification. OK.

And in the report, did the IG find that a number of OSM staffers acknowledged that using the 2008 rule as the baseline would result in a lower job-loss figure than would result if the 1983 rule was used?

Mr. KNOX. Congressman, yes. Many OSM—several OSM employees expressed a feeling that it would have an effect of lowering the job-loss——

Mr. THOMPSON. OK. So OSM knew that changing the baseline would change the job numbers.

Next I want to ask you about where the two rules apply. The 2008 rule is not in effect in my State of Pennsylvania. In the vast majority of the country the 1983 rule is still in effect. And that means that the reality for my constituents, and for most of the country, is that the 1983 rule is in effect.

So, the number of job losses across the country from this new rule will actually be more severe, is that correct?

Mr. KNOX. It is my understanding that the 2008 rule is only in effect in the States of Tennessee and Washington, and that all other States would be affected, therefore, by the use of the 2008 ruling calculations.

Mr. THOMPSON. And within your findings was there any determination of what the consequence of applying the 2008 rule, in what sounds like the vast majority of the country where it has not been followed, that that would result in, that that basically would change the job numbers?

Mr. KNOX. In our investigation we repeatedly heard that proposition from people we interviewed. But we never did get presented with any sort of calculations that would compare——

Mr. THOMPSON. OK.

Mr. KNOX [continuing]. The outcome between the two rules.

Mr. THOMPSON. But you did affirm in your testimony, in your findings, that the OSM staffers knew that changing the baseline would change the job numbers.

Mr. KNOX. That is correct, Congressman.

Mr. THOMPSON. OK. An OSM official was quoted in the IG report saying that using 1983 rules was more honest and accurate. Was he right?

Mr. KNOX. Again, Congressman, it is not my field of expertise. But my understanding of the issues surrounding that kind of a statement from that one individual, and the general feeling from the others who supported the use of the 1983 rule is that you are dealing with actual data.

Mr. THOMPSON. Right.

Mr. KNOX. Whereas, in the States, as we mentioned, that are not currently using the 2008 rule, to apply that rule would mean coming up with some data speculatively about—hypothetically about what production would look like in those States, if they had the use of the 2008 rule.

Mr. THOMPSON. And certainly, if we are making policy decisions that we want to be effective, in my opinion, we don't want to work with speculation. We want to work with good data.

Finally, I would like to ask you about a statement made by Director Pizarchik's counsel in the IG report. She is quoted as saying, "It is not the real world, this is rulemaking." Was OSM in the real world, where the 1983 rule was applied, or are they often in the Rulemaking Land?

Mr. KNOX. Congressman, all I can say is that in our investigation the OSM staff who supported using the 2008 rule felt that, because it was on the books, that it was a rule, it should be applied.

Mr. THOMPSON. Thank you. Thank you, Chairman. Maybe for the first time I yield back when the clock ended.

The CHAIRMAN. The gentleman did very well, and we are taking note of that.

The Chair recognizes the gentleman from Missouri, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. While today's hearing focuses on one specific aspect of the Obama administration's war on coal, I would like to take a moment and make some observations about how this administration's war on coal, and more generally, the use of rules and regulations to bypass the policy process, will have disastrous consequences to my congressional district, and to other districts across rural America.

Whether it was this week's rule from EPA requiring carbon capture technology on a new coal-fired power plant that is not yet commercially viable, or future rules that are going to attempt to cap carbon emissions from existing power plants, it is clear that this administration is not giving up its quest to make new coal plants unaffordable, and to shut down the current coal plants that power over 80 percent of my congressional district and most of the Midwest.

If we cannot use the reliable energy coal provides, lights across rural Missouri and America will be out. My constituents and their employers depend on the affordable, reliable energy that coal power provides. With the economy as it is, this certainly isn't the proper time to raise electric rates on folks that are just scraping by, especially if the justification for the massive rate hikes are based in pseudo-science and conjecture.

Time and time again, this Congress has rejected, in a bipartisan fashion, initiatives like cap and trade that would make dramatic policy changes to the way that the coal industry operates. The response to a congressional rejection of policy change should not be to go around Congress through the rulemaking process.

Today's hearing about the so-called Stream Protection Rule, and the outrageous events surrounding its botched roll-out by this administration highlights the lengths that they will go to circumvent the policy process by attempting to make changes through rules and regulations. When you dismiss data based on what it says in the face of no other alternatives, you are making a political decision and not a regulatory one.

Mr. Knox, I have a couple questions. The report shows that the Stream Protection Rule was over a billion-dollar regulation, and was the top priority by OSM. In the report, you detail how the Director called the former regulatory support division chief to his office and expressed concerns about the leaked job-loss numbers, and how they could embarrass the President, since he had just delivered the State of the Union message "indicating that jobs would grow in the Administration."

In addition, the report cites an OSM official, who was the project manager, who quoted the Director as telling him that "obviously, something needs to change," and that he was to "figure out a way that the assumptions could be changed so that the numbers didn't look so bad."

Another OSM employee testified that "her impression was that this direction ultimately came from the Director," and that she heard that the job-loss number "was going to be hard to overcome."

Yet, when reporting on your interview with the Director regarding changing the baseline, "He said he didn't know who made the decision." Is that even believable?

Mr. KNOX. Congressman, all of the things you have just expressed are in our report, and we have reported for consideration by the Department, by the Bureau, and by this body, by the Congress, for action as appropriate. But the OIG is responsible for pursuing allegations, gathering facts, and providing that information back to decisionmakers about what action might be appropriate to take.

Mr. SMITH. All right. Again, how could the Director not be aware of such an important decision that was getting national media coverage through the Associated Press story, and was consuming this agency with meetings, public conferences, and letters to contractors on a multi-million-dollar contract?

Mr. KNOX. I can't speak for what the Director may or may not have been aware of.

Mr. SMITH. Do you believe the Director was being honest in his response?

Mr. KNOX. Congressman, we found no evidence that he was being dishonest.

Mr. SMITH. Those statements that I just quoted, do you think those were his statements, or were those not correct?

Mr. KNOX. He made these statements. Well, we would have to pick those apart, piece by piece. Most of those statements were made by the project manager.

Mr. SMITH. I hope that you are picking those piece by piece, and I hope that you are not going to allow politics to get in the decision. Thank you.

The CHAIRMAN. The time of the gentleman has expired. I understand that Ms. Shea-Porter has a brief question, and the gentlelady is recognized.

Ms. SHEA-PORTER. Thank you very much. I had a colleague state that there was not mining going on inside of streams. So I just wanted to quote from the *Federal Register* Friday, December 12, 2008, the rules and regulations. "Activities in or adjacent to perennial or intermittent streams. Application requirements for surface mining activities in a perennial or intermittent stream," and your application must demonstrate that "avoiding disturbance of the stream is not reasonably possible." And application requirements for surface mining activities within 100 feet of a perennial or intermittent stream, your application must demonstrate that "avoiding disturbance of land within 100 feet of the stream either is not reasonably possible, or is not necessary to meet requirements."

So, actually, I thought it was important. I thank you for giving me the opportunity to state that this is, indeed, an issue here for the Natural Resources Committee, because it is actually in the rule. Thank you very much, and I yield back.

The CHAIRMAN. I thank the gentlelady.

I want to thank all of the Members for being here. And, Mr. Knox, from time to time after these hearings, further questions arise. And if further questions do arise, we will send you a letter and ask you to respond back, and we would ask you to respond back in a very, very timely manner.

But I very much appreciate the report that you have given us. I appreciate the time that you have given us, and your answers. And particularly the last exchange you had with Mr. Smith, where you simply put the facts out there. However those are to be interpreted are for us to interpret them. And I alluded to that when I spoke just a moment ago, and I think that is exactly where Mr. Smith was coming from. And others may have different views, but you have given us the facts where these things were said in a timeline that, for lack of a better word, would be "curious," if there wasn't a motivation other than what conclusion you came to. But I won't ask you to respond to that. Thank you very much for your report.

And before we adjourn, I just want to make a brief statement, because this has been an ongoing issue. We have had questions and concerns about this rulemaking process for nearly 3 years. This IG report raises further questions about what the Obama administration did to manipulate the data, to lessen the economic impacts on what the administration is currently doing as they move forward with this rewrite.

There is now a bipartisan opposition to this rulemaking process. This committee will continue our oversight efforts and our advancement of legislation to put an end to this job-destroying rewrite. And Mr. LaMalfa alluded to that.

But before we conclude this hearing, I want to follow up on something that I said last December. One of the topics mentioned was how we could continue with aggressive oversight of this administration, how we are running out of patience with this lack of transparency and ongoing refusal to provide us with documents and information that we have been seeking, and, in some cases, seeking for years. As this hearing shows with many Members, our patience is running out.

It is troubling that the Interior Department continues to withhold documents about this matter and is again telling the IG not to provide documents. We have the Department of Agriculture and the Office of Management and Budget refusing to turn over all subpoenaed documents and make witnesses available to the committee for our investigation into the Secure Rural Schools program. We have the Interior Department refusing to turn over documents and make witnesses available in a number of matters, including our investigations into ethics within the Department, and conflicts of interest by senior officials within the Department.

We have been exceedingly patient in this past year, and have waited to give the new Interior Secretary a chance to get up to speed. But as the administration's refusal to provide the necessary information has left us no other choice than to proceed and to utilize all available tools to this committee, including the uses of subpoenas for documents, and potentially subpoenas for witnesses.

So I want to tell the committee that we are going to continue this. But, from my perspective, as I just mentioned, our patience is wearing thin. And we are going to be very aggressive on this this year.

So, with that, if there is no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 11:55 a.m., the committee was adjourned.]

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Investigative Report of OSM Environmental Review, December 20, 2013, Office of Inspector General, U.S. Dept. of the Interior.

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