



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

October 20, 2015

Office of Surface Mining Reclamation and Enforcement
U.S. Department of Interior
Room 252 SIB
1951 Constitution Avenue NW
Washington, DC 20240

Attention: **Docket Identification Number OSM-2010-0018** Stream Protection Rule

To Whom It May Concern:

Following are the comments from the Wyoming Department of Agriculture (WDA) on the Office of Surface Mining Reclamation and Enforcement (OSMRE) proposed Stream Protection Rule (SPR).

Our comments are specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. The SPR will affect our agriculture industry, our natural resources, and the welfare of our citizens, it's important you continue to inform us of proposed actions and decisions and provide us the opportunity to express pertinent issues and concerns.

The WDA formally requests the OSMRE to withdraw the proposed SPR. The proposed SPR identifies 6 areas to be revised, with the first being the protection of ephemeral streams (Page 44443). OSMRE proposes additional protection on ephemeral streams under the new Clean Water Rule, which was recently blocked by the courts, proclaiming that the Clean Water Rule exceeds the agency's legal authority. With this new information, we believe it is appropriate to withdraw the SPR in its entirety. SPR is based on the Clean Water Rule and its proposed protection to intermittent and ephemeral streams.

In addition, we understand OSMRE neglected to consult or coordinate with state or local agencies in Wyoming during the development of the proposed SPR. Due to numerous negative implications the proposed SPR will have on Wyoming, its natural resources, and land managers, OSMRE should have provided an opportunity for close coordination with Wyoming's stakeholders and resource managers. WDA again, recommends withdrawal of the proposed SPR until OSMRE staff fully understand the impacts the proposed SPR will have on Wyoming.

The remaining comments are specific to the SPR:

- (Page 44443) "Fourth, there is need to ensure protection or restoration of streams and related resources, including the headwater streams that are important to maintaining the ecological health and productivity of downstream waters."

Equal Opportunity in Employment and Services

BOARD MEMBERS

Jana Ginter, *District 1* • James Rogers, *District 2* • Shaun Sims, *District 3* • John Moore, *District 4* • Allison Lass, *District 5*
Bryan Brost, *District 6* • Kevin Schieffer, *District 7*

YOUTH BOARD MEMBERS

Kendall Roberts, Southeast • Richard Schlenker, Northwest • John Hansen, Southwest • Cameron Smith, Northeast

We have great concerns with this premise and how OSMRE proposes SPR implementation. OSMRE proposes to accomplish this protection through the use of conservation easements and permanent closures to riparian areas, intermittent streams and ephemeral draws.

Permanent conservation easements limiting existing uses and agricultural practices is a significant change in management, and will negatively impact agricultural producers, rangeland health and even wildlife habitats. We insist, prior to any decisions or adoption of this rule, OSMRE provide a complete economic impact analysis on the costs to existing users from the incorporation of permanent closures of riparian areas.

- (Page 44443) "Sixth, there is a need to ensure that land disturbed by surface coal mining operations is restored to a condition capable of supporting the uses that it was capable of supporting before any mining,..."

WDA supports reclamation and restoration to regain functional lands. However, the proposed SPR is in total conflict with this premise by proposing to protect streams, riparian areas and ephemeral draws through the use of permanent conservation easements and permanent fencing. These two actions will eliminate all current and past uses.

We continue to urge OSMRE to withdraw the proposed rule. If the proposed rule is not withdrawn, we strongly insist the removal of any actions that would eliminate existing uses on the land through conservation easements or permanent fencing.

- (Page 44446) In the section identified as legal authority for the proposed rule, Section 102(f), states "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

The proposed SPR does not strike a balance with agriculture if permanently fencing off all riparian areas and keeping lands in permanent conservation easements. By removing these lands from use, all previous uses, which includes agriculture and livestock grazing would also be removed. This alone would create hardships upon agriculture and other uses. We insist OSMRE remove permanent fences and conservation easements from the proposed SPR.

- (Page 44446) In the section identified as legal authority for the proposed rule, Section 515(b)(2) is in regards to restoring the land to a level that supports the past uses. "...to a condition capable supporting the uses which it was capable of supporting prior to mining."

Again, restoring the lands to previous uses and then permanently removing those same lands from those uses is not acceptable. The OSMRE is charged with bringing reclaiming and restoring the land back to the form and function prior to being mined, not eliminating all uses by implementing

permanent easements and fencing around stream, riparian areas intermittent streams and ephemeral draws.

We support local land managers working with the site specific condition/issues, in close coordination with the various users to develop and implement voluntary best management practices to protect riparian areas. We do not support a blanket strategy of permanent easements or permanent exclosures to protecting streams and riparian areas.

- The proposed SPR discussed Stream Buffer Zones Rules. Stream Buffer Zone Rule was developed to protect perennial streams or non-perennial streams meeting a certain criteria. We believe including all ephemeral draws and intermittent streams is deemed excessive and inappropriate.
- (Page 44495) "Proposed paragraph (d)(2)(ii) would require that the scope of the enhancement measures be commensurate with the potential long-term adverse impacts to those resources and that the measures be permanent in nature. For example, riparian corridors must be protected by conservation easements (deeded to an appropriate agency or organization) or deed restrictions..."

Providing permanent closures to areas for potential impacts is excessive and eliminates the local land manager's ability to manage the lands. WDA supports the need to define "commensurate" and coordinate changes in land uses through the State of Wyoming and directly affected individuals. To automatically close lands based on assumed adverse impacts and not on monitoring and scientific data, is not appropriate.

- (Page 44599) Enhancement measures to protect fish and wildlife (Section 780.16 (d)(vii)) states "Permanently fencing livestock away from streams."

Permanently fencing out agricultural practices from the water and available forage goes against Section 102 "strike a balance between protection of the environment and agricultural productivity" and Section 515 – "restoring the land to a condition capable supporting the uses which it was capable of supporting prior to mining."

Agriculture producers and livestock grazing rely on these areas for water and forage. A blanket statement of exclusions from use will negatively impact producers. We insist OSMRE address the negative impacts the proposed SPR will have on agricultural practices.

- (Page 444599) Enhancement measures to protect fish and wildlife (Section 780.16 (d)(ix)) states "Establishing conservation easements or deed restrictions, with an emphasis on preserving riparian vegetation and forested corridors along perennial and intermittent streams."

Again, WDA does not support the use of conservation easements or permanent fencing around riparian areas.

OSMRE

Stream Protection Rule

10/20/2015

Page 4 of 4

- (Page 44669) Vegetation criteria should not be included in a national rule. Criteria should be defaulted to the State and to the local land management agencies. An area of 26 inches of rain (above or below) is arbitrary and does not fit Wyoming. Very little of Wyoming would fall above the 26 inch threshold. We strongly believe removing vegetation criteria from the proposed SPR and deferred to local agencies and land managers.

Again, we would like OSMRE to fully withdraw the proposed SPR and appreciate the opportunity to comment.

Sincerely,



Doug Miyamoto

Director

DM/cw

CC: Governor's Planning Office Wyoming
Game and Fish Department
Wyoming Board of Agriculture
Wyoming Stock Growers Association
Wyoming Wool Growers Association
Wyoming Farm Bureau Federation
Wyoming State Grazing Board
Wyoming Association of Conservation Districts