



OFFICE OF ATTORNEY GENERAL
STATE OF WEST VIRGINIA



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January 17, 2017

The Honorable Paul Ryan
Speaker
United States House of Representatives
H-232, US Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Re: The Stream Protection Rule and The Congressional Review Act

Dear Speaker Ryan and Majority Leader McConnell:

As the chief legal officers or as environmental regulators for our States, we write to urge Congress to use its power under the Congressional Review Act to disapprove the "Stream Protection Rule," 81 Fed. Reg. 93,066 (Dec. 20, 2016) (the "Rule"), which was issued by the Interior Department's Office of Surface Mining Reclamation and Enforcement ("OSM"). The Rule is an unlawful attempt drastically to limit coal mining in vast areas of the country.

We greatly appreciate the attention that Congress already has shown in this critical matter, including by having directed that OSM share relevant environmental data and drafts with the States and work to reengage previously ignored "State partners in a meaningful manner before finalizing the ... rule." 161 Cong. Rec. H10217 (daily ed. Dec. 17, 2015).

However, and consistent with its general approach to development of this Rule, the federal regulatory bureaucracy failed to comply with that instruction and other requests to allow for greater involvement by States and the public in the regulatory process. The agency also ignored requests from States and Members of Congress for 90 days to review the Rule's supporting environmental and regulatory impact statements and analyses.

Instead, OSM moved forward with its Rule without significant and genuine consultation with the States. On December 19, 2016, the agency announced the substance of the Rule and its publication in the Federal Register the next day. The agency also purported to make the Rule effective on January 19, 2017 -- the very eve of the forthcoming change in presidential administrations.

The agency's failure properly to consult with the States resulted in the agency issuing a burdensome and unlawful Rule that demands congressional action. The Rule would have a disastrous effect on coal miners, their families, workers in related industries, and their communities. It also would impose very significant costs on American consumers of electricity,

while undermining our nation's energy supply. The regulation ignores Congress's instruction in the Surface Mining Control and Reclamation Act that the States should be the primary regulators of coal mining, and it seeks to impose an unwarranted, top-down, one-size-fits all approach. It would subject longwall mining to unrealistic standards while ignoring local geology and otherwise broadly prohibiting many useful mining activities already sensibly regulated by States. The *Wall Street Journal* is correct in its December 20 assessment that the Rule is "a power grab aimed at giving federal regulators more authority to make coal too expensive for anyone to mine or use."

We will take appropriate legal action to safeguard our States against the harm imposed by this unlawful Rule. However, the Congressional Review Act provides Congress the authority to take action immediately after President-elect Trump takes office to avoid the harm imposed by the Rule and protect both the States and the federal government from having to engage in potentially lengthy litigation on this subject.

Accordingly, we respectfully request that at the appropriate time with the new Administration taking office, you and your colleagues in the Congress pass a joint resolution disapproving the Final Rule under the procedures of the Congressional Review Act, 5 U.S.C. 801 et seq., so that it shall have no continuing force or effect. We are hopeful that incoming President Trump will support this effort, and to that end we respectfully submit a copy of this letter to Vice President-elect Pence.

Thank you for your vigilant attention to this matter.

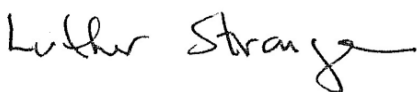
Very respectfully yours,



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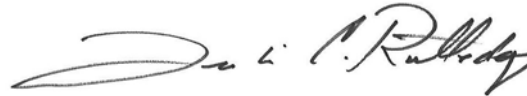
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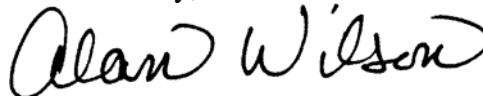
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cc: Vice President-elect Pence