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THE RECENT REPORT BY THE OFFICE OF INSPECTOR GENERAL"
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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.