NDARECs
North Dakota Association of Rural Electric Cooperatives
3201 Nygren Drive NW • P.O. Box 727 • Mandan, ND 58554-0727
Phone: 701.663.6501 or 800.234.0518
Fax: 701.663.3745 www.ndarec.com

Comments provided to the Office of Information and Regulatory Affairs regarding the Office of Surface Mining's proposed Stream Protection Rule (RIN: 1029-AC63)

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Background

The North Dakota Association of Rural Electric Cooperatives (NDAREC) is the trade association for the state's 16 distribution co-ops and five Generation and Transmission (G&T) co-ops in North Dakota. It was incorporated in 1958 and is located in Mandan, N.D.

North Dakota is home to five lignite coal mines that supply seven coal-fired power plants, and one coal gasification facility. Five of the power plants and the gasification facility are owned and operated by G&T co-ops that serve electric customers throughout North Dakota, Minnesota, and the surrounding region. Due to the high moisture content of North Dakota's lignite coal, it is not exported out of the state and is used exclusively at the nearby conversion facilities, in what is known as a mine-mouth operation. Three of the mines serve no other customer besides the G&T co-ops.

Impacts of the Stream Protection Rule on Electric Cooperatives

Due to the mine-mouth nature of the facilities, mining costs are paid through the co-ops to their coal supplier. Therefore, any increases in mining costs due to the Stream Protection Rule (SPR) are passed along to the G&T co-op as the sole customer, and to the distribution co-ops served by the G&T. Electric cooperatives account for almost 90 percent of coal-based generation in the state.

All three mines that serve as the sole-source coal supplier to North Dakota G&T co-ops estimate that the SPR will strand 40 to 65 percent of current coal reserves at a total annual additional cost of $40 million.

Due to the complexity of this rule, and the limited amount of time to comment, it is difficult for NDAREC to calculate the direct increase in electric rates for distribution co-ops associated with increased mining costs. All of the distribution co-ops in North Dakota operate as non-profit, member-owned enterprises that serve mostly rural and low-income customers.

In addition to the negative impacts directly associated with increased mining costs, communities served by co-ops will be negatively impacted by stranded reserves caused by the SPR and the associated decrease in mining activity.

Severance and Conversion tax revenue sharing is a significant source of revenue for counties in coal country. 70 percent of severance tax is returned to the counties in which the coal was produced. 15 percent of conversion tax is returned to the counties in which the coal was converted.

Total Severance Tax Paid to Counties in 2014	**$7,465,438**
Counties General Fund	$2,986,175
Schools	$2,239,631
Cities	$2,239,631
Total Conversion Tax Paid to Counties in 2014	**$5,715,346**
Counties General Fund	$2,286,138
Schools	$1,714,604
Cities	$1,714,604

Ton of Coal Delivered Annually to North Dakota G&T Co-ops	Tons Stranded by SPR	Annual Reduction in Severance Tax
26,500,000	13,250,000	$3,732,719

Three North Dakota counties home to mine-mouth G&T operation:

Mercer County Coal Taxes - 2014		Oliver County Coal Taxes - 2014		McLean County Coal Taxes - 2014	
Severance	$4,553,917	Severance	$888,387	Severance	$2,008,203
Conversion	$2,903,396	Conversion	$840,156	Conversion	$1,857,487
Total	**$7,457,313**	**Total**	**$1,728,543**	**Total**	**$3,865,690**
Severance Tax Impacted by SPR	**$2,276,959**	**Severance Tax Impacted by SPR**	**$444,194**	**Severance Tax Impacted by SPR**	**$1,004,102**

Request

Due to the complexity limited amount of time to comment, and the impact of the SPR on its members, NDAREC requests that the SPR be withdrawn, or reissued with additional time to allow all stakeholders the opportunity to provide appropriate review and meaningful input, as required by the Administrative Procedure Act.

While the NDAREC was precluded from submitting comment due to the inadequate amount of time provided, we are concerned that this rule has been proposed to address the environmental impacts associated with mining in the Appalachian region, and is not applicable to mining practices in North Dakota. Further, we question the need for such a rule when North Dakota has a proven track record and statutory requirement to reclaim mined to a standard of “as good or better” than before mining occurred.