Questions For the Record from the Subcommittee on Energy and Mineral Resources at the oversight hearing on June 15, 2021, in regards to the testimony of Joe Pizarchik on *"Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition*."

Questions from Chair Lowenthal for Mr. Pizarchik:

1. Mr. Pizarchik, you testified that Wyoming had not had a forfeited coal mine because two of its largest operators spun-off subsidiary companies with environmental liabilities. Those smaller companies then failed.

   Ms. Cromer also touched on this practice when she discussed the Blackjewel bankruptcy. Blackjewel acquired many of its mines from previous companies' bankruptcy proceedings. What can Congress do to prevent this vulture capitalism from happening and ensure that land and water are properly reclaimed?

Answer to QFR 1 from Chair Lowenthal. The Surface Mining Control and Reclamation Act contains provisions that make owners and operators liable for violations on their mines. These provisions are part of the Applicant Violator System. It is also common for most states to allow a permit to be transferred to a buyer and the state releases the seller from its environmental responsibilities. Congress should amend SMCRA to prohibit a state from releasing the original mine operator, the permittee, and the owners and controllers of these entities, from the coal company's environmental obligations. It should also specify that the owners and controllers of the new entity that acquires a coal mine can also not be released from their environmental obligations. The Bankruptcy Code should also be amended to prohibit any of the entities or people from having their environmental obligations discharged in bankruptcy proceedings.

Congress should also amend the law to specify that before a coal company can sell or transfer a permitted coal mine to another entity, either the company must post a reclamation bond in 100% of the state's cost to reclaim the mine or the buyer/new permittee must provide a full cost bond to the state before the permit transfer can be approved. Self-bonds, bond pools, and alternative bond system bonding should be prohibited by law.

Many coal companies and lawyers have concluded that one way to avoid responsibility for their environmental obligations is to sell their stock in the company to someone else. The mining permit is not sold or transferred. The coal company/permittee is not sold or spun-off into a new corporation. A new person or persons takes over as the new officers or owners or operators of the existing company. SMCRA does not authorize the state and federal regulatory authorities to stop these activities. Congress should amend the law to specify that someone who is an owner or controller of an entity that has obtained a permit to mine coal will always be considered an owner or controller for purposes of the environmental obligations. The law should specify that owners and controllers shall always remain liable for the coal company's environmental obligations.

Congress should also amend the Bankruptcy Code to provide clear authority, and responsibility, for the Department of Justice Bankruptcy Trustee to determine whether it is best for the environment to liquidate any coal company that enters bankruptcy, even if it is for reorganization. That assessment must put the completion of the bankrupt entity's environmental obligations ahead of all other interests.

Finally, there are times when the mining of coal will produce acid mine drainage that will flow from the mine when while it is in operation and after it is closed. This water pollution can discharge for many decades or longer. A few decades ago Pennsylvania determined how to calculate a bond to cover the cost of perpetual mine drainage treatment. Pennsylvania also developed software called AMDTreat that it used to calculate the net present value of the treatment costs. That software has been updated over the years by Pennsylvania, the Office of Surface Mining Reclamation and Enforcement, West Virginia, and the U.S, Geologic Survey. Because Pennsylvania used government resources to develop this software program, Pennsylvania decided to make it available, for free, to everyone. The updated software continues to be free for any state, coal company, etc., to use. It is used in numerous countries around the world. Congress should amend SMCRA to specify that when any coal mine creates acid mine drainage, the state shall require the coal company to post a bond in the full cost of the amount it will cost the state to perpetually treat the mine drainage discharge. The amended law shall also provide that the coal company must provide that mine drainage treatment cost to the regulatory authority. Payment can be made over time but not more than five years. The mine drainage treatment bond can be in the form of cash, certificates of deposit, irrevocable letters of credit, or a treatment trust fund. The mine drainage treatment trust funds developed by Pennsylvania can serve as a model.

2. During the hearing, Mr. Wendtland disagreed with your statement that Wyoming allowed a bankrupt coal company to mine without the legally required reclamation bond. Would you like to clarify this disagreement?

Answer to QFR 2 from Chair Lowenthal. Yes. The best way to clarify the disagreement is with the conclusions set forth in a document produced by an unbiased third party. That party is the United States Government Accountability Office (GAO). In March, 2018, the GAO filed a Report to Congressional Requesters titled "COAL MINE RECLAMATION: Federal and State Challenges in Managing Billions in Financial Assurance." On pages 21-22 the GAO states: In "2015 the Wyoming regulatory authority determined that an operator no longer qualified for self-bonding and ordered it to replace a $411 million self-bond. However, the operator entered into bankruptcy without having replaced the self-bond. In this case, the state regulatory authority determined that reclamation was more likely to occur if the operator continued mining and allowed the operator to do so without a valid financial assurance. The operator replaced its self-bond as part of its bankruptcy settlement approximately 17 months after the state regulatory authority's order to replace the self-bond…." Footnote omitted.

The GAO documented that the Wyoming regulatory authority chose to allow the coal company to violate state and federal law for more than a year. Wyoming also failed to assess a civil penalty as it is required to do by state and federal law. Two wrongs did not make a right, they just gave a Wyoming coal company and the state of Wyoming on advantage over coal companies and states that follow the law.

The GAO goes on to state: "However, if a self-bonded operator were to enter bankruptcy and did not secure a financial assurance to replace the self-bond or complete the required reclamation, the state regulatory authority would have to work through the bankruptcy proceedings to obtain funds for reclamation, [in this case $411 million] according to OSMRE's preamble to its 1983

self-bonding regulations. As a result, the state may recover only some, or possibly none, of the funds promised through the self-bond, and the cost of reclamation could fall on taxpayers."

However, federal courts have ruled environmental obligations are not subject to normal bankruptcy proceedings. It is my understanding that when the law is properly implemented, the environmental reclamation obligations must be addressed before any of the bankrupt company's creditors are paid, regardless of whether the creditor is a secured creditor or an unsecured creditor. Perhaps not all bankruptcy judges are cognizant of this aspect of the law. It is the responsibility of the state regulator to clearly and forcefully inform the court that environmental obligations come first. If the bankrupt coal company did indeed have a viable operation, they would have been able to provide a full cost reclamation bond. What is clear is Wyoming, at best, could not make its self-bond rules work, or worse, chose not to.

3. During the hearing, one of my colleagues asked Mr. Wendtland about a program amendment Wyoming submitted to OSMRE in 2014. Mr. Wendtland stated it was not approved by OSMRE until 2019. Mr. Pizarchik, can you tell us more about the Wyoming rule change?

Answer to QFR 3 from Chair Lowenthal. I searched the Federal Register notices of all Wyoming program amendments submitted to OSMRE in 2014 and approved by OSMRE in 2019. I only found one. In 1980 the Secretary of the Interior conditionally approved the Wyoming coal mining regulatory program. This means there were certain deficiencies in the Wyoming submission that Wyoming had to fix in order to get final approval of its coal mining regulatory program. In 2014, 34 years after the deficiencies were identified, Wyoming submitted a program amendment to correct the deficiencies. The Federal Register does not contain an explanation as to why it took Wyoming 34 years to submit a program amendment to address deficiencies OSMRE identified in 1980. According to the Federal Register, the amendment corrected deficiencies related to: valid existing rights determination requests, individual civil penalties, and ownership and control of coal companies. See Federal Register, 2019-12-04. To the best I can tell, none of these program amendments are relevant to the subject of the hearing. Why your colleague and Mr. Wendtland chose to bring up a matter that was not relevant to the hearing is unknown. I doubt it was to highlight that OSMRE was patient and waited 34 years for Wyoming to fulfill its legal obligations. Perhaps Mr. Wendtland wanted to indirectly point out that OSMRE is so understaffed that it took the agency five years to approve a simple program amendment.

4. Mr. Pizarchik, do coal companies comply with SMCRA's mandated contemporaneous reclamation standards?

Answer to QFR 4 from Chair Lowenthal. In over 25 years I have been on hundreds of coal mines. Both West Virginia and Wyoming were gracious enough to provide me an arial view of coal mines in their states. It was very clear that what some coal mine operators in both states considered to be "contemporaneous reclamation" was starkly different from what others were doing. This problem seemed to occur more frequently with coal mines that covered thousands of acres. I have seen many mines where responsible operators do reclaim as they go.

However, there are too many coal mine operators who are not responsible or choose to be irresponsible when coal market changes adversely impact their income. These coal companies do not "reclaim as they go." I respectfully urge Representatives who believe every coal company reclaims as they go to visit a variety of surface coal mines in Kentucky, Pennsylvania, West Virginia, and Wyoming. What they will see are mines where thousands of acres of disturbed un-reclaimed land sits idle while active coal extraction continues thousands of feet away. They will also see other mines where reclamation is being completed a short distance away from active coal extraction. It is also not unusual for some state regulators to appear to tolerate such deviations from the law. Is it because they hope the financially stressed coal company will recover and will then reclaim the disturbed acreage? Is it because the coal company claimed in its permit application that circumstances require large un-reclaimed areas so the coal from different seems can be blended to meet customer needs? Has the state regulatory authority verified the claims submitted to justify the proposed mining and reclamation plan that does not provide for concurrent reclamation? It is questionable whether every state regulator has the expertise, or perhaps the fortitude, to assess the proposal.

Questions from Representative DeGette for Mr. Pizarchik:

The state of Colorado recently created an Office of Just Transition and an action plan to help coal communities and workers move towards a more prosperous future. Rep. DeGette will soon be reintroducing a Clean Energy Innovation and Deployment Act, which includes an Energy Workforce Training and Transition Title, based in part on the Colorado Just Transition Law. The energy workforce title of the DeGette bill includes several measures to promote access to jobs in the modern energy economy, especially for workers in transition. Much like the Colorado law, it will create a new DOE Energy Workforce Transition Office to identify existing resources for displaced energy workers and communities. It will also provide financial and technical assistance to states to develop energy plans that address workforce and economic transition, and establish apprenticeship, workforce placement, and university leadership programs.

1. Would programs like those that would be established by the DeGette bill be helpful, or have been helpful, to the workers and communities in energy-related transitions that you have observed? Please refer to specific measures of the DeGette bill, as described in Attachment A, that you believe would be helpful; more helpful with some revision; or not helpful.

Answer to QFR from Representative DeGette: Thank you for your question and thank you for your work force transition efforts. What is described in Attachment A should be helpful. I do have a few suggestions that would make the measures even more helpful. They primarily focus on the displayed worker.

First, Section 501 establishes State Energy Plans. It goes on to provide the Plans will consider a number of subjects contained in a six bullet point list. If a state need only "consider" the items, "consider" may be all that some states do. Please consider specifying that the Plans must address the listed items.

Second, the State Energy Plans cover a lot of important matters but the list omits an important point. Homes, apartments, offices, stores, etc., consume a lot of energy. Updating or retrofitting these structures can reduce the consumption of energy, reduce the money a person spends to heat

and cool their home, business, or factory, and make businesses more efficient. Furthermore, training displaced energy workers to improve the energy efficiency of structures in their communities is a way to create new jobs that do not require them to move. Reduction of the cost to heat/cool a home can help people who live in economically disadvantaged areas.

Third, Sections 522 and 523 provide a comprehensive approach to improve education, job training, and grants to entities to operate retraining programs. What is missing is assistance to the displayed coal miner/power plant worker that would enable them to take advantage of retraining opportunities. Former coal miners/power plant workers had established a standard of living for their families based on high paid jobs. Many of them are not in a position to go to school and still be able to provide for their kids, pay their mortgage, utilities and other bills. Without assistance to these people their only choice is to find another job, even a low paid job.

Sections 522 and 523 would be more effective if they also provide financial support to the former coal miner/power plant worker during their retraining period and for a reasonable period afterwards until they get a new job.

Fourth, Section 525 will establish a program of public works called the Climate Resiliency Corps (CRC) similar to the Civilian Conservation Corps (CCC). The CCC was formed during the Great Depression. Economic conditions were far more severe than exist today. CCC provided barracks, food, and a small wage; all of which were a vast improvement over what the people had. For the CRC to be viable, it must provide more to the workers than what was provided by the CCC. It should pay a prevailing wage, if it does not provide housing and food.

Sixth, coal industry workers are proud of their heritage. They are proud that they, their family, ancestors, and neighbors worked dangerous, difficult jobs to power America and help win two World Wars. It is difficult for some of them to leave such hard, dangerous, labor intensive jobs, and the comradery of their co-workers, for a job that can appear to be less manly or that does not have the respect of the community. Working by yourself to maintain a wind mill or solar farm, or on computer coding, can be a difficult or impossible transition. I do not know how best to address this area. However. there are some possibilities in Appalachia.

Kentucky, Pennsylvania, and West Virginia have more dangerous abandoned coal mines than any other state. Alabama, Ohio, and Virginia have the next most. They also have tens of thousands of miles of waterways polluted by these abandoned mines. These abandoned mine lands and polluted waterways, together with your Energy Workforce Transition and Training Program, provide an opportunity not specifically addressed in your bill. There are enough abandoned coal mines that the displaced energy workforce could be employed fifteen to twenty years or so restoring the land and creating a more resilient climate. This work could carry them to retirement.

What is needed is money and a system to train them to be entrepreneurs who know how to restore a resilient landscape. The displaced coal miners could be trained to establish small local businesses to restore their land, water, and environment. They take pride in the mountains, valleys and streams where their families have lived for generations. Their love of the land and water could be a solid base for training to not merely eliminate the abandoned mine hazards (which is the objective of the existing Abandoned mine land program), but to restore the forests and the wildlife, to restore clean water and the fish, to restore the ecosystem. Restoration of the land, water, and forests is a natural way to remove carbon from the air and store it naturally. It is

a way to reduce flooding that results from the more intense and frequent storms spawned by the changed climate. It is a way to create a viable post fossil fuel extraction economy.

Finally, much of the acid mine drainage that flows from coal mines abandoned before passage of the federal Surface Mining Control and Reclamation Act in 1977 continues to destroy tens of thousands of miles of America's waterways. To restore these streams and rivers the water must be treated by either large water treatment plants or smaller passive treatment systems (PTS), depending on the quantity and quality of the mine drainage pollution that flows from the abandoned mine land.

PTS are essentially manmade wetlands and acid neutralizers that raise the PH of the ware and remove the toxic metals. There are several hundred PTS in fourteen states. While more than $100 million has been invested to build the PTS, there is no dedicated funds to operate, maintain, or rehabilitate the systems. If Congress were to appropriate a mere $12.7 million per year to the Abandoned Mine Land Fund, dozens of former energy workers could be permanently employed. There would also be temporary local jobs that provide the limestone, etc., to rehabilitate the PTS as needed (about every ten to twenty years). Please see the attached proposed Appropriation language and accompanying Report Language. Congressman Raskin of Maryland and many other representatives have co-signed a request for these funds to create jobs. This appropriation would be a way to immediately provide workforce transition jobs.

Even many dozens more workforce transition jobs could be created if Congress were to provide for the workforce training and funds to build the large acid mine drainage treatment plants. It will take some time to design and build these plants and to train the workforce. EPA maintains a list of streams that are impaired by acid mine drainage (AMD) as required by section 303(d) of the Clean Water Act. While the tens of thousands of miles of coal AMD polluted streams are located in Appalachia, there are thousands of more miles of streams polluted by AMD that flows from abandoned hardrock mines in states like Colorado, Montana, etc. Coal mines and power plants located in the West and Mid-West are also closing. I recommend that you revise your bill to include funds to train former coal miners and power plant workers to work in large AMD treatment plants that treat pollution that flows from abandoned hardrock and coal mines.

New jobs in mine drainage treatment not only help with the workforce transition, they also generate state, local, and federal revenues. There is also data that shows that every mile of a stream that is restored will generate more than $100,000 per year to the local economy from recreation such as fishing, boating, etc. Finally, science has documented that a stream that is biologically restored also functions to reduce nutrients that flow down stream and pollute public water intakes, etc. Both the Chesapeake Bay and the Gulf of Mexico have dead zones from excessive nutrients that come from upstream waterways.

I am available to provide assistance if needed in regards to the above.