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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

November 5, 2009

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The Honorable Ken Salazar
Secretary of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Salazar:

At a time when the United States is attempting to recover from a serious economic recession, it's disconcerting that the Department of the Interior (DOI) continues to make decisions that block domestic energy production, hinder job creation, and increase our dependence on foreign sources of energy.

Furthermore, we are deeply concerned about a common practice of the Departments of the Interior and Justice of settling lawsuits filed without forcefully defending authorized agency actions. Specifically, a current lawsuit is challenging the use of categorical exclusions, a valuable tool provided by Congress to the land management agencies to improve the government process of approving energy production, while at the same time ensuring protection of the environment. We are worried that an out of court settlement by this Department would eliminate or severely limit the use of categorical exclusions and further prohibit the production of U.S. oil and natural gas.

Under the Energy Policy Act of 2005, Congress directed BLM to use categorical exclusions under Section 390 to expedite energy supplies by limiting redundant analysis and unnecessary red tape. While we support the Department's efforts to develop new guidance to address the few issues of consistency identified by GAO in the use of these categorical exclusions, we are concerned the Department of the Interior is prepared to use a sledgehammer where a scalpel would suffice.

The GAO recommended that the errors they identified could be cleared up with revised guidance, implementation templates, and better oversight from state offices. The GAO report found many examples where BLM failed to use categorical exclusions or applied additional restrictions, highlighting the cautious and overly conservative use of categorical exclusions by BLM. Categorical exclusions are not discretionary, yet GAO didn't attempt to quantify the one major abuse of BLM's implementation of Section 390 — the frequent violation of the law when categorical exclusions were not used for projects that met the criteria mandated by Congress.

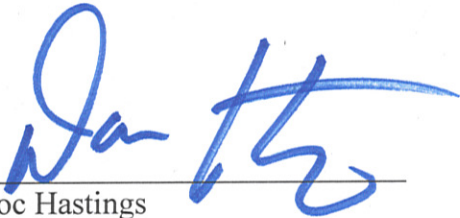
The Department should not need to be reminded that the Section 390 categorical exclusions are statutory, not administrative. There is nothing in the statutory language that even mentions extraordinary circumstances; rather, the language is straightforward in mandating the use of categorical exclusions when the conditions in the statute are met.

It is important to recognize that categorical exclusions are considered to be one of the best success stories of the Energy Policy Act. The use of categorical exclusions in energy permitting has been accompanied by more time available for field staff to conduct environmental inspections and to address the backlog of applications for permits to drill (APD). Field personnel recognize and appreciate having categorical exclusions in their management toolkit as it allows them to efficiently process permits in a timely manner while making calculated, common sense field decisions.

We would remind the new Administration that the Department of the Interior is not at liberty to decide which provisions of law they choose to follow. Congress directed the Department to use this valuable permitting tool and the Administration should not be seeking backdoor ways to avoid its duty to do so.

We stand ready to work with the Department of the Interior to provide a path forward to ensure consistency in the use of this valuable permitting tool that enhances our nation's energy supplies and creates new opportunities for the jobs and economic development that Western States so desperately need.

Sincerely,



Doc Hastings
Ranking Member
Natural Resources Committee



Rob Bishop
Ranking Member
National Parks Subcommittee



Doug Lamborn
Ranking Member
Energy and Minerals Subcommittee



Cynthia Lummis
Member of Congress