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

January 31, 2012

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JEFFREY DUNCAN  
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1951 Constitution Avenue, NW  
Washington, DC 20240

Dear Mr. Secretary:

This letter is a follow up to our January 25, 2012 letter providing the Department of the Interior (“Department”) a final opportunity to comply with our April 25, 2011 request for documents about White House edits to the Executive Summary of the final report entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (“ISM Report”) and notice of our intent to move to compel production of these documents if the Department does not voluntarily provide them. The edits in question implied that the moratorium had been peer reviewed by technical experts, who had provided input into the report’s recommendations when, in fact, they had not reviewed or endorsed the moratorium in the Executive Summary of the final report. A November 8, 2010 report from the Department’s Office of Inspector General (“OIG”) “determined that the White House edit of the original DOI draft Executive Summary led to the implication that the moratorium recommendation had been peer reviewed by the experts.” As explained in our January 25 letter, almost 4 months passed before the Department released 15 pages of documents that had not already been provided by the Department’s OIG. In a letter dated August 16, 2011, the Department provided copies of 7 almost identical form letters sent by Deputy Secretary David Hayes apologizing to the peer reviewers for falsely conveying their endorsement of the six-month drilling moratorium, totaling 14 pages, along with a copy of the 1-page internal management clearance form for the final report.

Our January 25 letter also expressed concern with the adequacy of the Department’s search for documents. For example, during an August 19, 2011, meeting, Department staff informed Committee staff they had not identified any emails sent *after* the report was issued between Department staff and the peer reviewers. However, they explained the search had been limited to only the email files of only one DOI official, Steve Black. Committee staff responded that the Department needed to search the email files of additional Department staff, Neal Kemkar. In a September 28, 2011 letter, we said we expected the Department to produce by

October 5, 2011 emails sent between the additional Department staff and peer reviewers after release of the ISM Report. After passage of this deadline with no response, we sent a letter on October 13, 2011 reiterating our request for these emails. Several days later, we received a letter dated October 13, 2011 from Department staff stating the Department was still in the process of searching for and processing these emails and it expected “to respond to the Committee’s request regarding these communications in the near future.”

Since our January 25 letter, a review of our files identified a letter from the Department dated October 24, 2011, stating that a search of the Department’s email archives identified communications between the peer reviewers and both Mr. Kemkar *and* Mr. Black. The Department’s October 24 letter also stated it was providing 112 documents totaling 919 pages. While this production expands the number of pages provided by the Department beyond the 15 not already provided by the OIG, a review of this material shows that the Department has provided only 70 unique documents, not 112 documents as the letter suggests.

To be clear, Department staff informed Committee staff on August 19 that a search of Mr. Black’s emails had not identified any responsive records. When pressed by the Committee to conduct an additional search focusing on Mr. Kemkar’s files, the Department belatedly found emails involving Mr. Black that the Department had previously said did not exist. It is also unclear from the Department’s response whether it is withholding any responsive documents from Mr. Black’s and Mr. Kemkar’s files, including any internal DOI communications concerning the peer reviewers’ comments. Based on this response, we remain seriously concerned about the Department’s efforts to comply with our request.

Given the uncertainties involving the Department’s prior searches for documents, the Department should be conducting new searches as necessary to respond to our January 25 letter. That letter specifically sought documents generated by, received by, or prepared for Elizabeth Birnbaum, Walter Cruikshank, Mary Katherine Ishee, David Hayes, Steve Black, Neal Kemkar, Hilary Tompkins, Constance Rogers, Wilma Lewis, and Rhea Suh between the dates of April 20, 2010 and June 30, 2010, including any documents prepared for or sent to Secretary Salazar. Based on our review of the material provided by the OIG, it is expected that such documents exist and the Department should be able to locate them without any undue delay or burden. We also continue to object to the Department’s refusal to provide us with copies of the 13 OIG documents that the Solicitor’s Office has claimed are covered by an Executive Branch confidentiality interest or do not pertain to our investigation.

The materials provided with the October 24 response do not fully satisfy any of the final requests we made in last week’s letter, and we continue to expect the Department to provide the documents identified in our January 25 letter, in accordance with our stated deadlines. An attachment to this letter provides additional information about responding to the Committee’s request, including definitions and instructions for compliance.

We continue to request the Department provide this information by February 9, 2012:

1. Documents concerning the decision to include a moratorium in final ISM Report, including any analysis of legal authority for or economic impacts from the 6-month moratorium included in the Executive Summary.
2. Documents, including emails or other communications, concerning edits, revisions, or changes to the draft Executive Summary of the ISM Report made prior to May 25, 2010.
3. Documents, including emails or other communications, concerning edits, revisions, or changes to the draft Executive Summary of the ISM Report made on or after May 25, 2010.
4. Documents concerning communications with the peer reviewers, including emails or other documents transmitting drafts of the ISM Report and/or Executive Summary to the peer reviewers and talking points or other materials, meeting summaries, or staff notes concerning any conference calls or meetings with peer reviewers that occurred in May 2010.
5. Documents related to the apology letter David Hayes sent to peer reviewers on or about June 4, 2010, including drafts of the letters.
6. Documents concerning any conference calls and/or any follow up meeting between Secretary Salazar and peer reviewers during June 2010, including emails, calendar entries, talking points or other briefing materials, and meeting notes.
7. Documents concerning drafts of any press releases or communications materials concerning the release of the ISM Report and/or the 6-month moratorium referenced in the Executive Summary of the ISM Report.

In addition, due to the Department's lack of compliance to date, we request the Department provide the following information by February 2, 2012:

8. Documents, including emails or memoranda, sent by the Department to staff with instructions for assisting with or responding to the OIG's 2010 investigation into the editing of the ISM Report.
9. Documents, including emails, sent by the Department instructing staff to search for and/or collect records responsive to our April 25 request to the Department.
10. Copies of the 13 OIG documents the Department claims are either not responsive or withheld on a claim of Executive Branch confidentiality interest.
11. Copies of any emails related to communications with the peer reviewers, as described in our September 28 and October 13, 2010 letters, not previously provided to us.

12. A copy of any index of administrative record prepared for the *Hornbeck* litigation challenging the 6-month moratorium referenced in the Executive Summary of the ISM Report.

Please contact us, or have your staff your staff contact Byron R. Brown, Senior Counsel for Oversight, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production of the requested material.

Thank you for the Department's prompt attention to this matter.

Sincerely,



Doc Hastings  
Chairman  
Natural Resources Committee



Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources

## Responding to Committee Document Requests

### A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

### B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also

required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on

Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.

9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Production materials should be delivered to:

Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington D.C. 20515