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

May 11, 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:

On April 5, 2012, a subpoena was issued and served on you, as Secretary of the Interior, for a complete and unredacted copy of specific documents, communications, and information related to the rewrite of the 2008 Stream Buffer Zone Rule by the Office of Surface Mining Reclamation and Enforcement, (“Subpoena”).

The Department’s April 12 and April 27, 2012 responses failed to comply with this duly authorized and issued subpoena. The Department’s April 12 response provided only 7 documents, of these many were heavily redacted, approximately half had already been produced by the Office of Management and Budget without the need of a subpoena, and one of the documents is readily available online. The Department’s April 27 production provided only 11 documents, including duplicates of the same documents or of documents previously provided, and again more transcripts that were so heavily redacted that there is no relevant information to be gathered from them. Both productions lacked an index to identify any withheld documents, and failed to assert any constitutional privilege to justify any such withheld documents as was required by the Subpoena. Subpoena at 2 ¶10.

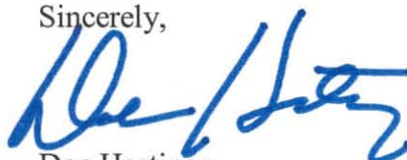
The Subpoena was narrowly crafted and asked for specific documents and recordings. The expectation was that the subpoenaed material would be readily producible by the Department. It is unfortunate that Department has chosen not to comply with the clear and simple subpoena. As you are aware, there are many more documents that have been requested over the course of the last year and a subpoena requiring production of additional documents will be served on the Department today. The Department’s refusal to comply with this first, narrow subpoena does not shield it from being served this second subpoena for a broader range of relevant documents. While the Department stated in a letter on February 2, 2012, that a “committee letter request for information in furtherance of an oversight inquiry does not impose a legal obligation to comply,” it should not be necessary to point out that a subpoena *does*

impose a legal obligation to comply. See *Eastland v. U. S. Servicemen's Fund*, 421 U.S. 491, 505 (1975) (“[S]ubpoena power may be exercised by a committee acting, as here, on behalf of one of the Houses.”); *Barenblatt v. U.S.*, 360 U.S. 109, 111 (1959) (“The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”); *Watkins v. United States*, 354 U.S. 178, 187 (1957) (issuance of subpoenas has long been held to be a legitimate use by Congress of its power to investigate); *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927); *U.S. House of Representatives v. U.S. Dept. of Commerce*, 11 F. Supp. 2d 76, 86 (D.D.C. 1998) (same); *United States v. Am. Tel. & Tel. Co.*, 551 F.2d 384, 393 (D.C. Cir. 1976) (same); cf. *Anderson v. Dunn*, 19 U.S. 204, 225 (1821) (The power of Congress to punish those who do not respect its process is essential to effective exertion of other powers expressly granted and therefore is implied).

In failing to comply with the Subpoena, the Department’s April 12 and April 27 responses claim that it is unable to provide all of the requested material because disclosure of the subpoenaed documents “inappropriately intrudes upon the Executive Branch’s constitutional authority to execute the law and engage in the administrative rulemaking process.” These claims have no basis in law, and fail to overcome the clear and compelling need for this information. Department officials and political appointees are not allowed to shield their communications from public scrutiny, especially where, as here, there are very serious questions about how and why this administrative action (the rewrite of the 2008 Stream Buffer Zone Rule) was initiated and is to be completed on a hastened schedule. As has been repeatedly communicated, the implicated questions include how this rulemaking process itself is being managed, whether proper procedures are being followed, the cost of this undertaking, and whether political implications underlying the rule are unduly influencing the process. The fact that an agency may be in the process of improperly imposing new regulations, eliminating thousands of jobs, and raising energy costs on the American people, is absolutely not a shield against transparency and Congressional oversight.

As has been explicitly expressed in multiple letters and conference calls, generalized claims of Executive Branch confidentiality interests, common law privileges, and Freedom of Information Act exemptions are not sufficient legal bases for withholding information from Congress in the face of a duly authorized and issued subpoena. It is noted that the Department’s April 12 and April 27 responses fail to assert any constitutionally-based privilege and do not request that the subpoena be held in abeyance pending an assertion of Executive Privilege by the President. Absent a valid claim of Executive Privilege for these documents, the Department has a duty to fully and promptly comply with both of these duly authorized and issued subpoenas and must do so by May 24, 2012. I am prepared to initiate further action, should the Department continue to refuse to comply.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written over a horizontal line.

Doc Hastings
Chairman