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TODD YOUNG
CHIEF OF STAFF

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

July 10, 2012

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JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
Mail Stop 6242
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Joseph Pizarchik
Director
Office of Surface Mining Reclamation and Enforcement
1951 Constitution Avenue N.W., South Interior
Washington, D.C. 20240

Dear Secretary Salazar and Director Pizarchik:

The Committee will hold an oversight hearing on July 19, 2012 to examine 1) the status of the proposed Stream Protection Rule rewrite and the lawsuit settlement agreement entered into on March 19, 2010 by the Department of the Interior ("Department") and the Office of Surface Mining Reclamation and Enforcement ("OSM") to complete the rewrite of the rule by last month; and 2) the failure of the Department to comply with the official Congressional subpoenas for documents on this proposed new coal production regulation, which is calculated to cause thousands of lost jobs and economic harm to over twenty states. This letter serves as an official invitation to provide testimony and answer questions at this hearing.

In February 2011, more than 16 months ago, you received the first in a series of letters asking for information and documentation that would explain some of the troubling decisions that have come from the Department and OSM concerning the rewrite of this coal production regulation. Based upon the statements of the President, Vice President and other senior officials, it is clear that this Administration is committed to pursuing an agenda to reduce or prohibit coal production in our nation by implementing new costly regulations through a myriad of federal agencies, from the OSM to the Environmental Protection Agency ("EPA"). The certain loss of thousands of good-paying jobs and skyrocketing power prices from the loss of this low-cost energy source has not slowed the Administration's efforts. However, the actions of the

Department to simply toss aside the legitimate, thorough, and recently-completed 2008 Stream Buffer Zone Rule (“Rule”) is particularly alarming.

The Rule was published in December 2008, and set to be effective January 12, 2009. Notably, it was published with the concurrence of the EPA, after a process that took five years of study and scientific evaluations, and at a cost of millions of taxpayer dollars. Almost immediately after the Rule was formally in place and the Obama Administration took office, the Department went on record as having “decided to change the rule” with the arrival of the new Administration. The first attempt to change the Rule came when the Department asked a Federal Court to vacate it, ignoring the millions of taxpayer dollars spent in its promulgation and defying the requirements of the Administrative Procedure Act. When the Court admonished this first attempt to circumvent established rulemaking procedures, the Department entered into a lawsuit settlement agreement with special interest groups to rush through a new rulemaking on a hastened and impractical time frame.

As you know, as part of the lawsuit settlement agreement entered into in March 2010, OSM and the Department committed to sign a proposed Stream Protection Rule by February 28, 2011 and sign a final action by June 29, 2012.¹ This self-imposed rushed timeframe required a sweeping rewrite of coal regulations to be substantially completed in just a year. When this rushed process inevitably led to significant concerns from affected states about the integrity of the process, and later, to considerable questions about the data used in draft environmental impact statement and regulatory impact analysis, the Committee began an investigation into this rulemaking process. The investigation was initiated to gain a clear understanding of how and why this extensive rewrite was initiated and was to be completed on such a hastened schedule; how the rulemaking itself is being managed, including whether appropriate procedures are being followed; the cost of the rulemaking; and whether the political implications of the rule are unduly influencing the process.

Over the last year and a half, the Department failed to meet even one deadline to any document request. After more than a year of avoiding questions, and refusing to provide requested documentation, the Committee authorized the issuance of subpoenas for the production of documents. Two subpoenas have been served on the Department seeking a range of documents that have been withheld. To date, these subpoenas have not been complied with, only small document productions consisting of significantly redacted information have been sent on the eve of deadlines under a claim of “good-faith efforts to respond” to the subpoenas and protestations of “thousands” of pages of documents produced. As has been repeatedly explained, compliance with Congressional oversight is not judged by the volume of pages submitted, but by producing all required documents and openly, honestly, and completely answering legitimate questions.

Absent a valid assertion of a Constitutionally based privilege, the Department’s continuing refusal to provide certain requested documents violates the subpoenas and frustrates Congress’ ability to fulfill its Constitutional oversight responsibilities. The Department continues to assert only vague claims of confidentiality concerns, and to claim that the

¹ Although these deadlines were agreed to by the Administration, both deadlines have been missed. No proposed rule has been issued and no final rule has been signed.

information requested is protected by a deliberative process exemption incorporated into FOIA [exemption 5, 5 U.S.C. § 552(b)(5).] The Committee has been clear that these are not valid claims to refuse to comply with Congressional oversight and official Congressional subpoenas *duces tecum*. This lack of candor and transparency is extremely disappointing considering the Administration's promise of an "unprecedented level of openness in Government."

Importantly, while the Department has largely stonewalled this Congressional investigation, it remains unclear why this rewrite was initiated to begin with, how the rulemaking process is being managed and, significantly, how the Department and OSM are managing and enforcing existing regulations during this time of uncertainty. What is clear is that the 2008 Rule has been cast aside by this Administration, no replacement rule has been completed, and the Department and OSM continue to hide behind claims of secrecy surrounding "ongoing rulemaking" even though the Administration entered into a settlement agreement before a Federal Court to have a new completed, final coal production rule in place by last month.

In the continuing effort to achieve compliance and to seek answers and clarity on the Administration's actions, the Committee will hold the above mentioned oversight hearing to hear directly from the Department. Questions should be expected on the Department's refusal to comply with the two subpoenas for documents, the current status of the rulemaking, and the Department's failure to abide by its voluntary court settlement agreement to complete the rule rewrite by the end of last month. The hearing will begin at 10 a.m. on Thursday, July 19, 2012 at 1324 Longworth House Office Building.

Enclosed with this letter are the parameters regarding written and oral testimony. Should you have any questions or need additional information, please have your staff contact the Committee at 202-225-2761.

Sincerely,



Doc Hastings
Chairman

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
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ROB BISHOP, UT
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MARK AMODEI, NV

TODD YOUNG
CHIEF OF STAFF

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

May 11, 2012

EDWARD J. MARKEY, MA
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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.

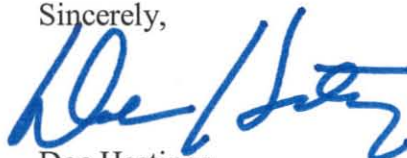
The Subpoena was narrowly crafted and asked for specific documents and recordings. The expectation was that the subpoenaed material would be readily producible by the Department. It is unfortunate that Department has chosen not to comply with the clear and simple subpoena. As you are aware, there are 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



United States Department of the Interior RECEIVED
OFFICE OF THE SECRETARY COMMITTEE ON RESOURCES
Washington, DC 20240 2012 APR 27 PM 3: 02

APR 27 2012

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This supplements our previous responses to your subpoena of April 12, 2012, and prior letters requesting documents related to the Department's ongoing Stream Protection rulemaking process.

The Committee on Natural Resources' (Committee) January 25, 2012 letter to the Department as well as the April 5, 2012 subpoena sought documents related to the Department's decision to conduct a new Environmental Impact Statement (EIS) to support the Stream Protection rulemaking rather than a supplement to the EIS developed in connection with the 2008 Stream Buffer Zone Rule, as the Department had previously indicated it would do in the November 30, 2009 Advanced Notice of Proposed Rulemaking (ANPR). On February 9, 2012 the Department produced to the Committee the April 30, 2010 Notice of Intent (NOI) and an internal memorandum, both of which described how, in response to 32,750 comments received on the November 30 ANPR, the Department determined that development of a comprehensive stream protection rule – one substantially different in scope than the 2008 Stream Buffer Zone Rule – would better advance statutory requirements. As a result of the changed scope of the new rule, the Department determined a new EIS was required. In addition to the documents produced on February 9, the Deputy Director of the Office of Surface Mining (OSM) briefed Committee staff on this issue on February 23, 2012, providing the same explanation as contained in the documents.

Since that production and briefing in February, we have continued to collect and review relevant documents. With this letter we are producing additional documents explaining the Department's decision to conduct a new EIS, and we are offering *in camera* review of preliminary drafts of the April 30 NOI. The explanation of the Department's decision in these additional documents is consistent with the explanation in the documents and briefing we previously provided.

As both the Executive Branch and Congress have recognized, however, they each have important interests that the other must strive to accommodate in the course of the oversight process. As we have explained previously, the Committee's subpoena and requests directly implicate the separation of powers between the two branches with respect to rulemaking and the Executive Branch's long-recognized interest in preserving the confidentiality of its pre-decisional deliberations especially regarding an ongoing rulemaking. We have nonetheless worked continually and in good faith to accommodate the Committee's interest in obtaining information that would further its legitimate legislative responsibilities. Through our productions of documents, offers of *in camera* review of documents, and briefing, we have provided the

Committee with substantial information that addresses the Committee's interests. Consistent with the established accommodation process, and so that we can consider what further accommodations may be feasible, we request that the Committee clarify what questions, if any, remain regarding the Department's decision to undertake a new EIS or what further information, if any, the Committee needs regarding the April 30 NOI.

In addition, as articulated in the Department's April 12, 2012 letter, the Department has been working with a transcription service to improve transcripts of recorded meetings between an initial contractor and OSM staff regarding a draft EIS and draft Regulatory Impact Analysis in support of a proposed Stream Protection Rule. We provided with that letter five of those improved transcripts, from which we redacted deliberative information regarding the ongoing rulemaking. With this letter, we are providing five additional improved transcripts, which have also been redacted in the same fashion. We will continue to provide additional improved versions of the transcripts as they become available.

Finally, on April 12, 2012 we also produced two drafts of the November 30 ANPR regarding the Stream Protection Rule: the draft the Department provided to the Office of Information and Regulatory Affairs (OIRA) to initiate the interagency review process as well as the draft on which OIRA concluded its review. These documents supplemented the final ANPR, which we produced to the Committee on February 9. In a call with Committee staff on April 16, we asked whether, in light of the disclosure of these drafts, the Committee could identify any specific interests or questions the Committee continues to have regarding the ANPR or its development. Unfortunately, Committee staff were unwilling to do so, and we are not in a position to consider further accommodations based on only a generalized desire for more information. Particularly given the efforts we have already made to accommodate the Committee's legitimate interests, providing us with a more specific description of the Committee's specific remaining interests and informational needs would not burden the Committee and would be an appropriate reciprocal accommodation of the Executive Branch's important interests. Consequently, we again request that the Committee clarify what, if any, particularized need it has for more information regarding the ANPR or its development.

Over the last year, the Department has undertaken continual, significant and good-faith efforts to respond to the Committee's requests for information related to the Department's ongoing Stream Protection Rule rulemaking process to the extent possible. We look forward to continuing to work with the Committee to address its interests in a manner that respects the separation of powers and the Executive Branch's deliberative confidentiality interests.

Sincerely,



Christopher Mansour
Director, Office of Congressional
and Legislative Affairs
U.S. Department of the Interior

cc: The Honorable Edward Markey, Ranking Member



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240
APR 12 2012

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COMMITTEE ON RESOURCES
2012 APR 12 PM 12:30

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Over the last year, the Department of the Interior has undertaken continual, significant and good-faith efforts to respond to the Committee on Natural Resources' requests for information related to the Department's ongoing Stream Protection Rule rulemaking process to the extent possible. The Department has done this even though the Committee's requests directly implicate the Executive Branch's long-recognized interest in preserving the confidentiality of ongoing deliberations. The Department has provided to the Committee more than 13,000 pages of documents as well as additional information, briefings, testimony, and *in camera* review of other documents, all of which has been directly responsive to specific Committee requests while preserving the integrity of the Executive Branch's deliberative process. Rather than continuing to work cooperatively with the Department on appropriate accommodations, the Committee has unfortunately issued a subpoena that in large part demands the disclosure of documents central to the Department's ongoing deliberations, including new requests for preliminary drafts of rulemaking documents.

The Department has not yet even completed and published a Notice of Proposed Rulemaking in this matter. As articulated in the Department's February 2, 2012 letter to the Committee, and in many previous communications by the Department to the Committee, it is the view of the Executive Branch that oversight of an agency's internal deliberations on an ongoing rulemaking effort at this preliminary stage inappropriately intrudes upon the Executive Branch's constitutional authority to execute the law and engage in the administrative rulemaking process. The Executive Branch's heightened interests in protecting ongoing deliberations in the uniquely executive function of promulgating an administrative rule is a well-established view that has been consistently expressed across administrations.

The Department will continue to work with the Committee to respond to the Committee's articulated interests in a manner that respects the Executive Branch's confidentiality interests in its ongoing deliberations. Today we are providing the Committee with two drafts of the Advanced Notice of Public Rulemaking (ANPR) regarding the Stream Protection Rule: the draft the Department provided to the Office of Information and Regulatory Affairs (OIRA) to initiate the interagency review process as well as the version on which OIRA concluded its review.

the interagency review process as well as the version on which OIRA concluded its review. These documents supplement the final ANPR, which the Department produced to the Committee on February 9, 2012. The Department also has been working with a transcription service to improve transcripts of recorded meetings between an initial contractor and OSM staff regarding a draft Environmental Impact Statement and draft Regulatory Impact Analysis in support of a proposed Stream Protection Rule. Earlier versions of these transcripts, which were redacted to respect the Executive Branch's confidentiality interest in its pre-decisional deliberations, were provided to the Committee in a previous production. The improved transcripts clarify inaudible portions and provide greater context. As the Department has previously explained, portions of the transcript will remain redacted to protect pre-decisional material that implicates Executive Branch confidentiality interests. With this letter, we are providing five of the improved transcripts, and we will continue to provide additional improved versions of the transcripts as they become available.

We look forward to working with the Committee to resolve this matter in a manner that respects the confidentiality of the ongoing Stream Protection rulemaking process.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Mansour". The signature is written in black ink and is positioned above the typed name and title.

Christopher Mansour
Director, Office of Congressional
And Legislative Affairs
U.S. Department of the Interior

cc: The Honorable Edward Markey
Ranking Member



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240
FEB - 9 2012

RECEIVED
COMMITTEE ON RESOURCES
2012 FEB -9 PM 6:37

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

With this letter we are continuing our response to the Committee's general oversight inquiry into the Department of the Interior's ("Department's") ongoing Stream Protection Rulemaking and to the specific requests made in the Committee's January 25, 2012, letter. This letter provides the Committee documents, information and offers of accommodation responsive to those specific requests.

We take this opportunity to respectfully disagree with the Committee that all the requests made in the January 25 letter fall within the scope of previous requests for documents. The January 25 letter indicated for the first time the Committee's specific interest in the decision to initiate the Stream Protection Rulemaking and included the first formal request for documents regarding the March 2010 settlement agreement for litigation challenging the 2008 Stream Buffer Zone Rule, documents related to attorney fee agreements, documents related to the November 2009 Advanced Notice of Proposed Rulemaking (ANPR), documents related to the decision to conduct a new Environmental Impact Statement (EIS), and documents related to the decision to expand scoping opportunities for the rulemaking effort. In addition, while the Department collected some documents responsive to the request regarding baseline parameters for EIS and Regulatory Impact Analysis (RIA) in response to previous requests in the Committee's April 1, 2011, letter regarding concerns about the contractors work and the Department's preliminary economic analysis, much of this request also goes beyond the scope of those previous requests made by the Committee. Because this request is outside the scope of previous requests, the Department has initiated a new search for responsive documents and is still in the process of identifying, collecting, processing and reviewing this material.

We believe that a briefing for Committee staff is the quickest and most efficient way for the Department to address the Committee's generalized concern in the manner in which the Department initiated the Stream Protection Rulemaking. In addition, in order to be responsive to the Committee's request, we are enclosing two *Federal Register* notices as well as two briefing memos the Office of Surface Mining Reclamation and Enforcement prepared for Department officials that explain the decisions to publish the November 2009 ANPR and to initiate a new EIS. We have redacted from the EIS memo a paragraph identifying the rule changes being considered. Those documents are on the enclosed CD, entitled "00035236_Hastings_002". We look forward to working with the Committee staff to schedule a time for this briefing and to

begin a focused process of accommodation based on the Committee's specific oversight interests and information needs.

Regarding the Committee's request about the settlement agreement, on January 13, in response to a January 5 email request, the Department provided Committee staff with the March 2010 settlement agreement regarding a challenge to the 2008 Stream Buffer Zone Rule and the two subsequent agreements for attorney's fees. As discussed with Committee staff in a telephone conversation on January 13, there have been no amendments to these agreements.

Communications with the plaintiffs regarding the Department's obligations under the March 2010 agreement took place primarily through approximately six oral status updates to the plaintiffs arranged by counsel at the Department of Justice, with participation by DOJ, DOI, and representatives of the plaintiff groups. Those updates occurred mostly by phone but do include two in-person meetings that took place on February 4, 2011, and April 18, 2011.

With regard to requests for baseline parameters for the RIA and EIS, the Committee is requesting pre-decisional, deliberative material regarding the development of the Stream Protection Rule and supporting documents and, as such, this request implicates the heightened Executive Branch confidentiality interests the Department has articulated at length in earlier letters including our letter of February 2, 2012, and in telephonic discussions with Committee staff. As described in that letter, to the extent such deliberative material was articulated, in the form of concerns about the contractors' work, in the preliminary draft EIS chapters that were disclosed without authorization, the Department has provided that material with surgical redactions in order to in order to accommodate as fully as possible the Committee's legitimate oversight interests and has requested the Committee not disclose this material outside the Congress. We continue to review and will provide additional documents that fall into this category but, as we do so, we will continue to surgically redact information that protects the heightened Executive Branch confidentiality interests. To the extent those deliberations are not linked to concerns with the contractor's work, as stated in the Department's February 2, 2012, communication to the Committee, the Department believes the request may inappropriately intrude upon the Executive Branch's constitutional authority to execute the law through this ongoing rulemaking process.

We also take this opportunity to more fully describe the categories of materials the Department has not provided to the Committee and the interests the Department believes are implicated by those materials. As we have articulated now in several previous communications, the Executive Branch has well-established confidentiality interests regarding its internal deliberations which are heightened when requests for such deliberative communications are made before the Executive Branch has made a decision regarding the pending issue and disclosure would thus reveal the Executive Branch's preliminary, non-final thinking on the matter. The Department has not provided the Committee with documents in the following four categories because they implicate these interests with respect to the ongoing rulemaking process: preliminary drafts of the EIS beyond those disclosed without authorization nor drafts of the proposed rule; inter and intra-agency communications regarding work on the ongoing development of the Stream Protection Rule; and documents related to preliminary economic analysis.


While the Department has provided to the Committee deliberative material regarding its concerns with the contractor's work on preliminary draft chapters of the EIS, because of implications for the same Executive Branch confidentiality interests, it has not provided material in those documents that reveal the scope or content of the draft rule itself or the scope or content of the RIA, as both documents are not yet complete and have not been disclosed. In addition, the Department has not produced to the Committee documents that reveal the scope or content of the RIA. The Department has not produced to the Committee documents that contain material regarding concerns about the legal adequacy of the contractor's work on preliminary draft chapters of the EIS or material regarding the Department's rights under its contract with the company that conducted this work because, in addition to containing deliberative material, those documents also contain attorney work-product and/or attorney-client privileged material.

Although we have not produced to the Committee high-level deliberative documents regarding the decision-making regarding the contractor, we have twice offered the Committee staff the opportunity to review those documents *in camera* and look forward to a response regarding that offer. The Department believes the material provided and offered for review should meet the needs of the Committee to understand the substantive concerns with the contractors' work as well as the Department's position that ending the contract early was in its best interest.

It is our intention to continue to work to satisfy the Committee's information needs in a manner that respects the Department's confidentiality interests in its deliberations. The Department looks forward to continued communication and cooperation with the Committee.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-7693.

Sincerely yours,



Christopher J. Mansour,
Director, Office of Congressional
and Legislative Affairs
U.S. Department of the Interior

cc: The Honorable Edward Markey
Ranking Member

The Honorable Doug Lamborn
Chairman, Subcommittee on Energy
and Mineral Resources

The Honorable Rush Holt
Ranking Member, Subcommittee on Energy
and Mineral Resources



United States Department of the Interior

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Washington, DC 20240

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2012 FEB -2 PM 5:04

FEB 2 2012

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of the Interior ("Department") is in receipt of your January 25, 2012, letter regarding the Office of Surface Mining's (OSM) ongoing process to develop a Stream Protection Rule. The Department has begun processing the several new requests for additional documents contained in that letter, and we look forward to working with you on these requests. This letter responds to your letter's references to the prior requests submitted to the Department.

As a threshold matter, the Department respectfully disagrees with the characterization in your letter that the Department has been unresponsive on this matter. To date, the Department has provided several informational letters and briefings as well as upwards of 12,600 pages of material responsive to the Committee's expressed questions and concerns. This letter constitutes the 11th production of material made by the Department to the Committee as part of these requests, including 76 pages provided in response to the informal email request for additional information by Committee staff on January 5, 2012, ahead of a phone call to discuss this matter. In addition, Departmental witnesses have appeared before the Natural Resources Committee to provide testimony and answer questions on this matter on three occasions. We will continue to be responsive and engaged in the ongoing dialogue with the Committee in order to meet its oversight needs in a manner that also respects the ongoing nature of the Department's deliberations and decision-making with respect to the Stream Protection Rule.

Although we understand that the Committee seeks to exercise Congress's oversight authority with respect to OSM's exercise of its statutory authority under the Surface Mining Control and Reclamation Act, we are concerned that it may be seeking to do so in a way that would inappropriately intrude upon the Executive Branch's constitutional authority to execute the law through this ongoing rulemaking process. We understand that the Committee is focusing on the Department's relationship with its contractor for this matter, but also it is seeking information with respect to the Department's rulemaking deliberations generally. As discussed below, we have worked to accommodate the Committee's oversight interests with respect to the Department's handling of the contractor and we will continue to do so. However, we have concerns with respect to the Committee's suggestion that it intends to conduct oversight of the Department's rulemaking activities on the Stream Protection Rule before we have even published a Notice of Proposed Rulemaking.

As we have described in previous communications, the Executive Branch's well-established confidentiality interests regarding its internal deliberations are heightened when requests for such deliberative communications are made before the Executive Branch has made a decision regarding the pending issue and disclosure would thus reveal the Executive Branch's preliminary, non-final thinking on the matter. Moreover, there is a substantial question regarding the extent to which such requests pertain to appropriate subjects of congressional oversight. As Attorney General William French Smith wrote during the Reagan Administration:

It is important to stress that congressional oversight of Executive Branch actions is justifiable only as a means of facilitating the legislative task of enacting, amending, or repealing laws. When such "oversight" is used as a means of participating directly in an ongoing process of decisionmaking within the Executive Branch, it oversteps the bounds of the proper legislative function. Restricted to its proper sphere, the congressional oversight function can almost always be conducted with reference to information concerning decisions which the Executive Branch has already reached. . . . Congressional demands, under the guise of oversight, for such preliminary positions and deliberative statements raise at least the possibility that the Congress has begun to go beyond the legitimate oversight function and has impermissibly intruded on the Executive Branch's function of executing the law. At the same time, the interference with the President's ability to execute the law is greatest while the decisionmaking process is ongoing.

1981 OLC LEXIS 7; 5 Op. O.L.C. 27; also reported at 43 Op. Atty. Gen. 327. Even were there not a question of oversight authority, we do not understand the Committee's need at this time for information about the Department's ongoing deliberations on the Stream Protection Rule. Review of the proposed rule and analysis once they are public would enable the Committee to explore its concerns regarding the rule's scope and potential impacts.

Your letter expresses concern that the Department is effectively asking the Committee to defer its oversight of this matter until after the Stream Protection Rule has been codified as law. That is not the case. There are additional steps in the rulemaking process, in advance of the promulgation of a final rule, that will allow for congressional input. The next step in this rulemaking process is for OSM to seek public comment on a proposed rule, a draft Environmental Impact Statement (DEIS), and a draft Regulatory Impact Analysis (RIA), which OSM plans to do later this year. Those materials will publicly reflect Department's official position and will be available to the public and to Congress at that time for review and comment. We would be happy to meet with the Committee and receive its comments as part of that process. Then, OSM will respond to formal comments before publishing its final rule and final analysis many months later.

While the Department therefore is not in a position to provide information and documents regarding the ongoing stream protection rulemaking deliberations, we are working to accommodate the Committee's specific concern regarding the circumstances in which OSM ended its relationship with its contractor. The Department has provided a substantial amount of pre-decisional and deliberative material, exceeding 1,200 pages, regarding its concerns with the

quality and substance of the contractor's work on preliminary draft chapters of the Draft Environmental Impact Statement. Although the Department considers these documents to be encompassed by the Executive Branch's well-established confidentiality interests, the Department produced this deliberative material to the Committee, with some redactions, in order to accommodate the Committee's legitimate oversight interests and has requested that the Committee not disclose this material outside the Congress. Those redactions covered only that material which is central to an ongoing deliberative process.

With this letter we make an additional offer of accommodation, one which we presented to Committee staff during a phone conversation on January 13, 2012, to permit Committee staff to review *in camera* high-level deliberative documents concerning the OSM's handling of its relationship with the contractor. We look forward to working with Committee staff to facilitate this review.

In addition, the Department only recently determined that it is in possession of 43 audio recordings made by Polu Kai of approximately seven meetings held with OSM to discuss development of the DEIS and a RIA. The Department also possesses transcripts of five of the recordings that were made by Polu Kai. Because these recordings contain internal, pre-decisional deliberations regarding the scope and content of the proposed rule under development as well as supporting documents, they implicate the Executive Branch's well-established confidentiality interests in the same manner as the documents discussed above. In order to identify information in the recordings that constitute the Department's internal, pre-decisional deliberations, the Department contracted with a transcription service to transcribe the recordings.

On the enclosed CD, titled 00035236_Hastings_001, the Department is providing the five transcripts and five sets of meetings minutes obtained from Polu Kai, along with 35 transcripts of the recordings prepared by the transcription service, with redactions. All redactions made in these transcripts are of material that reflects the Department's preliminary deliberations on the scope or substance of the draft rule itself, the RIA or the EIS being prepared to support the rule. Through this process, the transcription service identified several recordings that are either wholly inaudible or had substantial inaudible or unintelligible sections. The contractor has stated that eight of the recordings are of too poor quality to be transcribed. Additionally, the transcription contractor identified some audible but unintelligible portions on virtually all of the remaining recordings, and the transcripts we are providing to the Committee reflect those unintelligible portions. We therefore are resubmitting all 43 recordings to the transcription contractor along with additional information to assist the contractor in making a determination as to whether the poor-quality recordings and the unintelligible sections contain transcribable content. If the transcription contractor is able to identify any additional transcribable content that we are able to share with the Committee, the Department will provide more transcribed material if and when it becomes available.

Finally, you have asked for the legal basis for the Department's position. Where Congress has a legitimate need for information that will help it legislate and the Executive Branch has a legitimate, constitutionally recognized need to keep certain information confidential, each branch has an obligation to seek to accommodate the needs of the other. A committee letter request for information in furtherance of an oversight inquiry does not impose a legal obligation to comply

with the request but rather triggers the longstanding Executive Branch policy to seek “to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.” Memorandum from President Ronald Reagan, *Procedures Governing Responses to Congressional Requests for Information*, November 4, 1982. Thus, while the Department has not asserted a legal privilege, it has identified the relevant Executive Branch confidentiality interests in connection with its efforts to accommodate the Committee’s legitimate oversight needs.

On the CD enclosed with this letter, the Department is providing 45 documents totaling 418 pages for the Committee’s review. As discussed in the preceding paragraph, the Department has stamped documents with unredacted deliberative material with a watermark to indicate that they are subject to Exemption 5 of the Freedom of Information Act. As we have indicated in past correspondence on this matter, while we provided these documents with redactions to the Committee in furtherance of its legislative and oversight functions, the Department has not waived any privileges that are attached to these documents outside the oversight context. For this reasons, we continue to respectfully request that you refrain from releasing this pre-decisional material outside of Congress. The watermark is meant as a clear indication of which documents contain unredacted deliberative material and is not an assertion of privilege against the Committee by the Department.

We are aware that the Committee has asked for additional materials by February 9 and the Department expects to make another production to the Committee by that date. It is our intention that through the materials provided, those that we continue to provide, and other means of accommodation, we will meet the Committee’s information needs in a manner that respects the Department’s constitutional confidentiality interests in its deliberations. The Department looks forward to continued communication and cooperation.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-7693.

Sincerely yours,



Christopher J. Mansour
Director, Office of Congressional
and Legislative Affairs
U.S. Department of the Interior

cc: The Honorable Edward Markey
Ranking Member

The Honorable Doug Lamborn
Chairman, Subcommittee on Energy
and Mineral Resources

The Honorable Rush Holt
Ranking Member, Subcommittee on Energy
and Mineral Resources

DOC HASTINGS, WA
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BILL JOHNSON, OH
MARK AMODEI, NV

TODD YOUNG
CHIEF OF STAFF

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

January 25, 2012

EDWARD J. MARKEY, MA
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GREGORIO KILILI CAMACHO SABLAN, CNMI
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COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

For nearly one year, we've patiently and persistently sought the Department of the Interior's ("Department") compliance with our requests for documents, communications, and information related to the rewrite of the 2008 Stream Buffer Zone Rule ("Rule") by the Office of Surface Mining Reclamation and Enforcement ("OSM"). This is a serious matter that impacts the livelihood of entire communities and the jobs of thousands of coal miners across the nation, and the Department's failure to fully comply with repeated requests for information can no longer continue. This letter provides notice of our intent to move to compel cooperation and production of documents specified in this letter should they not be provided in the time requested.

I. Multiple Focuses of Oversight Investigation

This inquiry was originally initiated (by letter dated February 8, 2011) following public disclosure of analysis from the draft Environmental Impact Statement ("EIS") that the Rule rewrite would cause the loss of at least 7,000 existing jobs and economic harm across 22 states. Our focus on the Department's decision to undertake this sweeping, rushed rewrite of the Rule, and the economic impact it would cause, was expanded after the Department criticized and dismissed the contractor it had selected and hired to conduct this economic analysis. The existing Rule took five years of study and development to write and was published with the concurrence of the Environmental Protection Agency in 2008. We have very serious questions about how and why this rewrite was initiated and is to be completed on such a hastened schedule, how this rulemaking process itself is being managed including whether proper procedures are

being followed, the cost of this undertaking, and whether political implications of the rule are unduly influencing the process.

II. Department's Failure to Comply

The Department's response to this legitimate exercise of Congressional oversight authority has been extremely disappointing. Instead of prompt compliance, there is a pattern of dilatory tactics and non-responsiveness. Not a single deadline for the production of requested materials has been met. Despite months of effort, documents and communications requested multiple times have yet to be provided. On numerous occasions, we have requested that the Department produce documents and information, or as an accommodation to the Department, provide a detailed list identifying any withheld documents and the legal basis for withholding them. No such list has been produced. In response to questioning by Committee staff earlier this month, Department counsel said documents responsive to this inquiry had been collected as far back as February and March of last year, but that the documents remain un-reviewed and withheld. Department counsel was unable to provide even an estimate on the volume or type of documents being withheld.

Even more disturbing is the fact that the Department's efforts to collect documents and materials responsive to our April 1, 2011 letter failed to capture audio recordings of meetings and conversations between agency personnel and contractors hired to rewrite this federal regulation. It was only after the existence of these recordings were discussed in a November 18, 2011 hearing of the Subcommittee on Energy and Minerals that the Department acted to collect these materials, despite the recordings being in the possession of Department personnel since before February 2011. Based on information shared by the Department, we now understand there to be at least 43 digital audio recordings totaling 30 hours in combined length. The Department has, by their own estimation, been aware of these recordings for more than two months and still not provided them to us. It is alarming that the persons responsible for rewriting this Rule are the very same who failed to produce the audio recordings of their conversations months ago. Not only does this raise serious questions about the Department's willingness and ability to cooperate with this investigation, it also raises serious questions about the competence and motivations of those personnel empowered to rewrite a federal regulation that could destroy the jobs of thousands of Americans. The prompt production of these digital recordings is expected.

III. Department's Claims of Confidentiality and Privilege are Without Merit

To date, the Department has asserted only a generalized claim of an Executive Branch confidentiality interest as the reason for refusing to provide some requested material. As we expressed in our August 15, 2011 letter to you, this is not a legal basis for withholding information from Congress. The Department has failed to provide a detailed privilege log identifying the documents it is withholding in full or in part, and the legal basis that would justify applicability of a privilege to the withheld information, despite repeated requests for the Department to do so. An assertion of "important confidentiality interests of the Executive Branch" is not a recognized common law privilege. Furthermore, even if this claim could be

considered a privilege assertion, as we have noted on numerous occasions, claims of privilege are considered under Committee on Natural Resources Rule 4(h) and, similar to all common law privileges, are applicable only at the discretion of the Chairman. We expect the Department to provide the requested documents absent a valid claim of Executive Privilege by the President.

Further, the Department considers other withheld information to be protected from disclosure to Congress by the deliberative process privilege that is incorporated into FOIA exemption 5, 5 U.S.C. § 552(b)(5). As an initial matter, Department staff acknowledged on a January 14, 2012 telephone conference call that the Department may not rely on a FOIA exemption as a basis to withhold information from Congress. See 5 U.S.C. §552(d). For the deliberative process privilege to potentially apply, the information must be both predecisional and deliberative. See e.g., *Petroleum Info. Corp. v. United States Dep't of Interior*, 976 F.2d 1429, 1434 (D.C. Cir.). However, factual information generally is not considered to be deliberative and, therefore, is not protected by the privilege. See e.g., *EPA v. Mink*, 410 U.S. 73, 91 (1973). Furthermore, "The burden is on the agency to establish that all reasonably segregable portions of a document have been segregated and disclosed." *Pac. Fisheries, Inc. v. United States*, 539 F.3d 1143, 1143 (9th Cir. 2008).

As Committee staff explained to Department staff in the January 14, 2012 call, it is impossible for us to evaluate the Department's concerns without a clear accounting of the documents being withheld. The deliberative process privilege is not an absolute bar against disclosure and cannot be used to shield alleged government wrongdoing. See *In re Sealed Case*, 121 F.3d 729, 737-38 (D.C. Cir. 1997). As we have detailed in this letter, we have very serious and legitimate concerns with the manner in which this rulemaking process is being handled. Even under the Department's faulty logic in support of the deliberative process privilege, it must examine each document and provide non-privileged portions. In contrast, the Department here is making a blanket claim of the privilege to withhold broad categories of information from Congress and appears to be refusing to provide even non-exempt documents or portions of documents or a detailed explanation of its search and withholdings. We are unclear as to why the Department has decided to produce some documents in their redacted form, while withholding other documents in their entirety – all with the claim of deliberative process privilege. In fact, the Department appears to also be withholding documents under this claim that it hasn't even bothered to review after collecting them nearly one year ago.

In a letter from the Department dated October 17, 2011, which was nearly ten months after our initial document request, it was stated that "in most cases, legitimate Congressional oversight interests can be satisfied by reviewing decisions . . . after they are made." While we appreciate the Department's willingness to comply with Congressional oversight once it has successfully codified its rushed rewrite of this federal regulation, we are not willing to wait until that time. To restate, this is an inquiry into the decision and actions to initiate the rewrite of this federal regulation, the manner in which the rewrite process is being managed or mismanaged, the cost of this undertaking, the termination of the contractor after disclosure of job loss information, and now the cooperation of personnel in complying with this legitimate exercise of Congressional oversight authority. We will not wait until the Department has cemented this rule into place and thousands of jobs are on the chopping block before getting answers to our

questions. We have waited nearly one year and the Department will not be able to use the excuse that it is in the middle of rewriting a federal regulation as a shield from providing requested information on that process and the decisions it has made. To be clear, it is within the purview of the Congress to determine what issues are germane to any given investigation, and what materials are responsive to a particular request. Furthermore, a number of our requests sought documents about decisions that have already been made, including the decisions to initiate this new rulemaking process, as described in the Advance Notice of Proposed Rulemaking published in the Federal Register on November 30, 2011, and the decision to terminate the contractor preparing the draft EIS.

IV. Noncompliance with the Administration's Stated Goal of Increased Transparency

The Department's failure to comply with these Congressional oversight requests is even more troubling considering the President's stated commitment to create "*an unprecedented level of openness in Government.*" See Memorandum for the Heads of Executive Departments and Agencies regarding Transparency and Open Government, Jan. 21, 2009. (Emphasis added.)

The President has advised agencies that "*[i]n the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.*" See Memorandum for the Heads of Executive Departments and Agencies regarding Freedom of Information Act, Jan. 21, 2009. (Emphasis added.) As part of the Department's efforts to implement the President's policy in favor of openness, you issued a memorandum on July 2, 2009 to all Department employees that, "*The Department will only withhold information when we reasonably can foresee that its release would harm an interest protected by a FOIA exemption (e.g., our national security or the privacy interests of individuals) or when disclosure is prohibited by statute. The President's and Attorney General's messages extend beyond the boundaries of the FOIA. They call upon agencies to aggressively increase proactive disclosures of information that is of interest to the public, thus vastly increasing information that is available on the internet. Our goal is to increase transparency.*" (Emphasis added.) When the Administration is rushing to rewrite a federal regulation that could cost thousands of American workers their jobs and careers during a time of economic hardship, the Department should be complying with rather than defying these pledges of transparency.

V. Final Opportunity for the Department to Comply

It is expected that the following items will be provided by the Department in the time requested. Each of the following documents is encompassed in the previous requests for documents made to the Department. This list does not include all of the outstanding items sought, and compliance with those requests is still expected. At this time, though, the following specific items are to be promptly provided. As stated at the outset of this letter, this serves as

notice of our intent to move to compel cooperation and production of these documents if this deadline is not met.

Documents and Items to be Produced

The following items are to be produced by the Department no later than February 2, 2012.

1. All recordings and all transcripts of recordings of meetings between OSM and contractors including recordings of any and all meetings related to the drafting and completion of the EIS and the RIA. This includes but is not limited to the 43 recordings containing 30 hours of recorded data in OSM's possession.
2. A complete, unredacted version of all items provided in redacted form, including those items listed in the Department index #00027094_Hastings_005_PRIV, received December 2, 2011, and Department index #00027094_Hastings_004_PRIV, received October 17, 2011.

The following items are to be produced by the Department no later than February 9, 2012.

3. All documents regarding the March 2010 settlement requiring OSM to make best efforts to sign a final action on the proposed rule no later than Friday, June 29, 2012; including drafts and any changes to the settlement with the litigants or ongoing discussions with the litigants about the Department's efforts to meet the terms of the settlement, and all documents related to attorney fees paid as a result of the settlement.
4. All documents including any drafts and briefing papers, related to the development of or analysis for the Advanced Notice of Proposed Rulemaking published on November 30, 2009.
5. All documents, including emails or memoranda, regarding the decision not to rely on the EIS for the 2008 rule, and to conduct a new EIS.
6. All documents, including emails or memoranda, within the Department and OSM, between the Department and OSM, between the Department and/or OSM, Office of Management and Budget, Council on Environmental Quality, Army Corps of Engineers, and White House Staff, and between OSM, the Department and any contractors or subcontractors (including but not limited to Polu Kai Services, ECSI, Morgan Worldwide, Plexus, and MACTEC) regarding the baseline parameters for the EIS and the RIA, specifically but not limited to documents regarding:
 - a. The baseline and parameters that were provided to the contractors prior to and including February 2011.
 - b. The baselines and parameters that were provided to the contractors after February 2011.

- c. The decision to expand the scoping opportunities for the re-write of the Rule.
- d. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
- e. Whether the proposed rule would cover only surface mining or surface and underground mining.
- f. The implementation timeline of the Stream Protection Rule.
- g. Assumptions that the 2008 Rule was in effect and being enforced across the United States.

Including but not limited to communications to/from and between the following individuals:

- a. Ellen Athas
- b. John Craynon
- c. Andy Devito
- d. James Laity
- e. Brent Means
- f. Dennis Rice
- g. Emily Sharp
- h. Dianne Shawley
- i. Nancy Sloanhoffer
- j. Stephanie Varvell
- k. William Winters

- 7. A complete and detailed privilege log for all items responsive to any current or previous request from the Committee that the Department continues to withhold from the Committee, regardless of reason.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production. 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

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement

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,

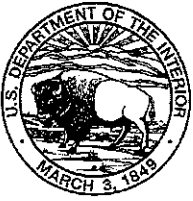
affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control 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



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 13 2012

The Honorable Doc Hastings
Chairman,
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter transmits documents responsive to requests number 2 and 4 of the January 5, 2012, e-mail received from your staff.

Enclosed with this letter is one CD titled "00027094_Hastings_006" that contains 9 documents consisting of 76 pages of material responsive to those requests. None of these documents contain redactions.

As always, we remain committed to working with the Committee to accommodate the Committee's information needs.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Edward J. Markey
Ranking Member

The Honorable Doug Lamborn
Chairman, Subcommittee on
Energy and Mineral Resources

The Honorable Rush D. Holt
Ranking Member, Subcommittee on
Energy and Mineral Resources



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 02 2011

The Honorable Doc Hastings
Chairman,
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter transmits additional documents responsive to request number 1 of your April 1, 2011, letter regarding concerns about the quality of a contractor's work and completion of an Environmental Impact Statement (EIS) to support the Office of Surface Mining Regulation and Enforcement's Stream Protection rulemaking effort.

Enclosed with this letter are two CDs. The first is titled "00027094_Hastings_005" that contains 31 documents consisting of 221 pages of material responsive to your request number 1. None of these documents contain redactions or otherwise confidential material.

The second CD is titled "00027094_Hastings_005_PRIV" and contains 147 documents totaling 1,136 pages. The documents on this disc are also responsive to your request number 1. These documents are watermarked as "Subject to FOIA Exemption 5" and contain internal, pre-decisional deliberative material with respect to which the Executive Branch has well-established confidentiality interests. The Department is producing these documents to the Committee, with some limited redactions, as discussed in previous transmittals with regard to similar material, in order to accommodate the Committee's legitimate oversight interests regarding the Department's concerns with the quality of the contractor's work. While we are providing these documents, we are not waiving any privileges that are attached to these documents in the FOIA or civil litigation context, and therefore, we respectfully request that you refrain from releasing the documents outside of Congress.

As always, we remain committed to working with the Committee to accommodate the Committee's information needs.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Edward J. Markey
Ranking Member

The Honorable Doug Lamborn
Chairman, Subcommittee on
Energy and Mineral Resources

The Honorable Rush D. Holt
Ranking Member, Subcommittee on
Energy and Mineral Resources



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 17 2011

The Honorable Doc Hastings
Chairman,
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter transmits additional documents responsive to requests numbered 1 and 3 of your April 1, 2011, letter regarding concerns about the quality of a contractor's work and completion of an Environmental Impact Statement (EIS) to support the Office of Surface Mining Regulation and Enforcement's Stream Protection rulemaking effort. This production is the second in a rolling production in response to item 1 of the April 1 letter and the sixth production related to the Stream Protection rulemaking that the Department has transmitted to you.

Enclosed with this letter are two CDs, the first titled "00027094_Hastings_004," contains four documents totaling 493 pages. These documents are responsive to your request numbered 1 and 3, and comprise consolidated comments on the draft SPR EIS and updated chart of recipients of the draft EIS.

The second CD, titled "00027094_Hastings_004_PRIV," contains copies of the Cure Notice and Response, and these documents contain both redactions and a watermark that reads "Subject to FOIA Exemption 5." These two documents address the Committee's concern about the manner in which the Department ended its relationship with a contractor, which is a completed action. However, in addition to indicating the Department's thinking regarding the quality of the contractor's work, this material also relates to the ongoing development of the EIS, for which preliminary draft chapters have previously been inadvertently disclosed to the public and subsequently produced to the Committee. Thus, these documents reflect internal, pre-decisional deliberations with respect to which the Executive Branch has well-established confidentiality interests. As discussed in more detail below, the Department is producing these documents to the Committee, with some limited redactions, in order to accommodate the Committee's legitimate oversight interests regarding the Department's concerns with the quality of the contractor's work.

Further, because of the unredacted deliberative material contained in these two documents, they have been stamped with a watermark to indicate that they are subject to Exemption 5 of the Freedom of Information Act (FOIA). While we are providing these documents with very limited

redactions to the Committee in light of its oversight functions, we are not waiving any privileges that are attached to these documents in the FOIA or civil litigation context, and therefore, we respectfully request that you refrain from releasing the documents outside of Congress.

As noted above, the Department has redacted limited material that reflects the Department's preliminary thinking on the scope or substance of the draft rule itself and the Regulatory Impact Analysis (RIA) being prepared to support the rule. Neither the draft rule nor the RIA has been completed, and neither document—unlike the inadvertently-released preliminary draft chapters of the EIS—has been publicly disclosed. The Committee's September 28 letter regarding the Stream Protection rulemaking noted that the Department is making this distinction between discussion of the preliminary draft EIS chapters, on the one hand, and the draft rule and RIA, on the other. We want to take this opportunity to more fully describe our need to protect the independence, integrity, and confidentiality of our ongoing rulemaking proceeding.

It is the longstanding policy of the Executive Branch to seek to accommodate Congressional oversight requests to the fullest extent possible consistent with the constitutional and statutory responsibilities of the Executive Branch. Much of the material the Committee has requested reveals internal, deliberative, pre-decisional communications concerning OSM's ongoing development of a rulemaking proposal. The Committee's inquiry into this ongoing decision-making process goes to the heart of the relationship between the Legislative and Executive Branches and the separation of powers rooted in the Constitution.

The Executive Branch's well-established confidentiality interests regarding its internal deliberations are heightened when requests for such deliberative communications are made before the Executive Branch has made a decision regarding the pending issue. Not only would disclosure in these circumstances reveal the Executive Branch's preliminary, non-final thinking on the pending matter, but it also raises separation of powers concerns about intrusion into the Executive Branch function of executing the law.

In most cases, legitimate Congressional oversight interests can be satisfied by reviewing decisions (including the analysis and rationale articulated to support the decision) after they are made. The Department is seeking to accommodate the Committee's oversight interests in the Department's handling of the EIS contractor in a manner that is consistent with our separation of powers and confidentiality concerns through the approach to these documents articulated above.

Finally, the disk we are providing today contains several sets of consolidated departmental and cooperating state comments on the contractor's preliminary draft chapters of the EIS. These documents, along with the Cure Notice and Response, are responsive to request item 1 of your April 1 letter. Also included on the disk is an updated chart of those individuals who received all or part of the preliminary draft EIS based on additional information received by the OSM. An earlier version of this chart, responsive to request number 3 in your April 1 letter, was provided to you under the cover of our June 17 transmittal. The OSM believes this chart is now complete.

As always, we remain committed to working with the Committee to accommodate the Committee's information needs in a manner that respects the Department's constitutional interests in executing the laws as well as its limited resources.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Salotti". The signature is fluid and cursive, with the first name "C." and last name "Salotti" clearly visible.

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Doug Lamborn
Chairman, Subcommittee on
Energy and Mineral Resources

DOC HASTINGS, WA
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TODD YOUNG
CHIEF OF STAFF

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

October 13, 2011

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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 September 28, 2011, the Committee once again wrote you to request that the Department of the Interior (DOI) provide documents and information related to DOI's Office of Surface Mining, Reclamation and Enforcement's (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). The Committee requested that documents related to OSM's concerns, discussions, comments or questions about the quality of Polu Kai's work be produced and documents related to the RIA be made available to Committee staff for review by October 5, 2011. On October 11th, Committee staff received an email from a DOI official noting that DOI had missed this latest deadline and hoped to produce a response soon.

As you are aware, the Committee began its investigation of the rewrite of the Rule in February 2011. Although some documents have been produced, taken as a whole, DOI's response can best be characterized as an exercise in deliberate delay and noncompliance. Couched with claims of limited resources and privilege concerns, DOI continually professes the desire to be responsive to the Committee's requests, but then does not produce the requested information and often does not provide any written response until after the deadline imposed by the Committee has passed. We are frustrated by these tactics and pattern of delay, and non-response to official Congressional oversight of DOI. Over eight months have passed, and the Committee has not received any documents relating to OSM's assessment of the quality of Polu Kai's work despite suggestions raised in the press that OSM disapproved of the contractor's performance. On numerous occasions, the Committee has requested that DOI produce the requested documents and information, and the Committee continues to wait for DOI to fully comply with all requests.

Consequently, this letter serves as a final request for complete compliance with the requests for documents and information under the terms contained in the Committee's letters

dated information and documents by letters dated February 8, 2011; February 10, 2011; April 1, 2011; July 18, 2011; August 15, 2011; and September 28, 2011. DOI's response is due no later than October 17, 2011. If DOI fails to once again meet the Committee's deadline, we will consider exercising the Committee's authority to compel compliance with the requests through the issuance of subpoenas.

Sincerely,



Doc Hastings
Chairman
Natural Resources Committee



Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement

DOC HASTINGS, WA
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U.S. House of Representatives
Committee on Natural Resources
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September 28, 2011

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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:

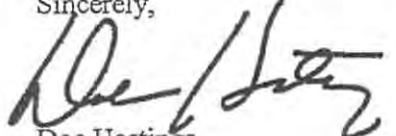
As you know, the Committee is conducting an investigation into DOI's Office of Surface Mining, Reclamation and Enforcement's (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). The Committee has made requests for information and documents by letters dated February 8, 2011; February 10, 2011; April 1, 2011; July 18, 2011; and August 15, 2011.

On August 19, 2011, Committee staff met with DOI staff regarding another ongoing investigation being undertaken by the Committee. During this meeting, DOI staff represented that documents relating to concerns, discussions, comments or questions regarding the quality of Polu Kai's work performed in connection with the revision of the Rule would be provided to the Committee the following week. This information had been requested by the Committee in its April 1st letter. DOI staff also informed Committee staff that because of perceived privilege concerns, DOI would be inviting Committee staff to come to DOI to review documents responsive to the Committee's other requests relating to the rewrite of the Rule. Additionally, DOI staff informed Committee staff that DOI was making a distinction between information relating to the RIA and the EIS because the RIA was not yet public and the EIS had been made public. Because of this distinction, DOI viewed the RIA and the scope of the Rule as part of ongoing rule making and related information and documents did not have to be provided to the Committee. Consequently, DOI would not be providing any information and documents responsive to Request 2 as set-forth in the Committee's April 1st letter. At this time, the Committee reserves comment on DOI's position.

On September 2, 2011, after the Committee did not receive any documents from DOI, Committee staff contacted Christopher Mansour to inquire about the status of the production. Mr. Mansour indicated that DOI planned to provide the information discussed at the August 19th meeting in early September.

Given the passage of time since the original request for this information was made, the Committee requests that any and all information relating to the quality of Polu Kai's work in connections with OSM's rewrite of the Rule be provided to the Committee no later than October 5, 2011. The Committee also requests that by October 5th, DOI staff make any documents relating to the Rule that DOI has privilege concerns available for Committee staff review. We look forward to DOI fulfilling its obligation to be responsive to the Committee's requests.

Sincerely,


Doc Hastings
Chairman
Natural Resources Committee


Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement

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U.S. House of Representatives
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August 15, 2011

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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:

The Committee is in receipt of the August 1, 2011 letter from the Department of the Interior's (DOI) Office of Congressional and Legislative Affairs relating to the status of several formal document and information requests the Committee has made to DOI and its bureaus during the 112th Congress. Although the August 1st letter discusses the requests collectively, because the issues regarding DOI's compliance in each matter vary, for the purpose of clarity, the Committee will address each in separate correspondences. In this letter, the Committee will specifically speak to DOI's responses to date and assertions contained in the August 1st concerning DOI's Office of Surface Mining, Reclamation and Enforcement's (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). The Committee has made requests for information and documents by letters dated February 8, 2011; February 10, 2011; April 1, 2011; and July 18, 2011.

The Committee appreciates DOI's recognition of this Committee's legitimate and important oversight responsibilities and pledge to work with the Committee to provide materials responsive to the Committee's needs as stated in DOI's August 1st letter. The Committee is also aware of DOI's concerns about Executive Branch confidentiality interests. The Committee has repeatedly, in writing and through conversations between Committee and DOI staff, provided detailed instructions on how DOI can explain that it will not fully comply with a request or how DOI can assert a claim of privilege when withholding a document. Specifically, the Committee has instructed that 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 detailing why full compliance is not possible. Further, 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 recipient; and (e) the relationship of the author and recipient to each other. Unfortunately, in this matter, DOI has not followed these procedures in relation to its assertion of privilege for documents relating to Request 1 as contained in our letter of February 10th that requests communications between OSM and a list of federal agencies and

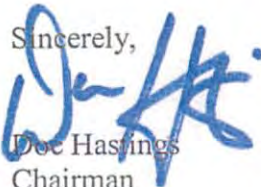
offices. Nor has DOI followed these procedures in response to Request 2 as contained in the Committee's letter of April 1st that requested documents and communications relating to the economic impact or potential job loss estimates or figures from October 1, 2010 to the present. Instead, DOI has continually made general assertions of confidentiality concerns about the information requested by the Committee. These general assertions are unsatisfactory responses because they fail to convey the appropriate or any level of detail about the responsive material being withheld. The Committee is unable to evaluate the validity of the privilege being claimed when none is plainly or specifically stated in writing. Consequently, the procedure outlined above addresses DOI's confidentiality concerns while also respecting the Committee's Constitutional duty to conduct oversight activities. Vague statements of privilege are not acceptable and repeated general statements of such can infer a deliberate effort to delay or thwart the Committee's oversight of DOI. The Committee asks that DOI comply with Request 1 of the Committee's February 10th letter and Request 2 of the Committee's April 1st letter by providing responses no later than August 29, 2011 which follow the procedure outlined above.


The Committee acknowledges that DOI has provided approximately 10,500 pages of documents, most of which are publicly available environmental analysis and supporting scientific documents cited by Polu Kai LLC in preparing the draft EIS and memoranda of understanding with cooperating agencies. The Committee notes that its requests are for all responsive materials and are continuing in nature. Responsiveness is not measured by the number of pages produced, but by completely fulfilling the requests.

In the August 1st letter, DOI committed to begin the production of documents responsive to Request 1 of the Committee's April 1st letter by August 5, 2011 with a projected deadline of one month. On August 9, 2011, DOI delivered a letter to the Committee that described the production of two separate discs of documents, the first titled "00027094_Hastings_003" and the second titled "00027094_Hastings_001-CONF_RMVD", that were being provided in response to Request 1. Unfortunately, DOI provided two copies of the same disc, 00027094_Hastings_001-CONF_RMVD. DOI staff has been notified of this mistake and a corrected production has been made. The Committee expresses its disappointment that production has begun three months after the original deadline imposed by the Committee and has already been flawed. The Committee hopes and expects that in the future, DOI will be more timely in its response to requests by the Committee.

The Committee also wishes to dispel the misimpression created in the August 1st letter that the Committee has not discussed the revision of the Rule with OSM Director Joe Pizarchik. On April 7, 2011, Director Pizarchik appeared before the Energy and Mineral Resources Subcommittee at a hearing regarding the OSM budget and provided testimony regarding the Rule. The Committee will decide if, when, and how it intends to have further discussions with Director Pizarchik about the Rule after it receives additional responsive materials from DOI.

As previously stated, we are deeply concerned with DOI's initiation of this sweeping rewrite of the Rule as well as the manner in which pursuit of this revision is being conducted. For these reasons, we request and expect DOI to respond in full.

Sincerely,

Doc Hastings
Chairman
Natural Resources Committee


Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

AUG - 9 2011

The Honorable Doc Hastings
Chairman,
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter transmits the first production of documents in a rolling production related to item 1 of your April 1, 2011 letter regarding the Office of Surface Mining's ongoing stream protection rulemaking. It follows letters from the Department dated March 1, April 6, May 13, June 17, and August 1.

Item 1 of your April 1 letter requests documents and communications relating to the Department's concerns about the quality of the work done by a contractor developing an Environmental Impact Statement to support the rulemaking. As indicated in the Department's letters dated June 17 and August 1, the Department considers item 1 of the April 1 letter to be the only open request for documents from the Committee regarding the stream protection rulemaking. We anticipate additional productions to the Committee of documents related to item 1 throughout the next month. In addition, because the contractor has waived its privilege on its Technical Proposal, the Department is providing a non-watermarked version to replace the one previously provided to the Committee.

Enclosed with this letter are two CDs, with accompanying indices.

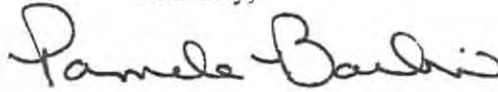
The first CD, titled "00027094_Hastings_003" contains 37 documents and 239 pages responsive to item 1 of the April 1 request.

The second CD, titled "00027094_Hastings_001_CONF_RMVD" contains the un-watermarked Technical Proposal which is 97 pages.

As previously stated, the Department understands and respects your interest in this important topic and, as always, the Director is ready to brief you on actions being undertaken by Office of Surface Mining as it moves forward with its rulemaking effort.

Please do not hesitate to contact me at (202) 208-1403 if you have any questions.

Sincerely,

Handwritten signature of Pamela Barbic in cursive script.

for

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 01 2011

The Honorable Doc Hastings, Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Hastings:

The Department of the Interior is in receipt of your three letters, dated July 18, 2011, that relate to the status of several of the requests for documents and information that you have made to the Department and its bureaus during the 112th Congress.

Specifically, these letters address requests for documents and information that relate to --

- all lawsuits currently filed or pending against the Department of the Interior and its bureaus, agencies, and offices;
- the Office of Surface Mining, Regulation and Enforcement's ongoing Stream Protection rulemaking; and
- the Report of Investigation on the Federal Moratorium on Deepwater Drilling issued by the Department's Office of Inspector General.

As an initial matter, I want to be clear that the Department recognizes the legitimate and important oversight responsibility of the Natural Resources Committee, and we are committed to working with the Committee and its staff to provide material responsive to the Committee's information needs while respecting important Executive Branch confidentiality interests and recognizing the limited resources of the Department. In our efforts to respond to your letters, the Department has already responded with five letters that included substantial information responsive to the Committee's requests and over 10,500 pages of documents all of which required extensive staff time and resources. These responses, in the view of the Department, and as indicated in our letters, closed out many of the requests you have reiterated in your letters of July 18, 2011. Moreover, the Department continues to expend significant resources and staff time to collect, review and process documents for production to the Committee regarding your remaining requests.

Following a conversation with your Committee staff on Friday, July 29, 2011, we now understand that two of the Department's letters and accompanying documents delivered to the Committee in April and June, respectively, were apparently misrouted after delivery and never received by the appropriate staff. We have since redelivered the letters and documents.

We also remain committed to working with you and your staff to address any specific remaining needs of the Committee regarding responses that have been completed.

A detailed response addressing the substance of each of these letters is provided below.

Request for Information Related to Lawsuits

One of your July 18 letters relates to your May 4, 2011 request for information related to all lawsuits currently filed or pending against the Department and its bureaus, agencies, and offices, and delineates additional information relating to each case that you requested.

Along with staff from the Department's Office of the Solicitor, I discussed this request with Committee staff on May 19 and June 7. In both conversations, we indicated that the Department of the Interior does not have a centralized tracking system to enable us to readily provide information you requested and that we would coordinate with staff at the Department of Justice (DOJ) to most expeditiously obtain information from their litigation tracking systems. As you note in your letter, that information – provided by DOJ's Civil and Environment and Natural Resources Divisions and the Executive Office of United States Attorneys – was provided to you on June 20. The information provided was in the form of three indexes, comprising more than 240 pages.

Your July 18 letter indicates that "in subsequent conversations DOJ and Committee staff agreed that DOJ could first provide the Committee with a list of lawsuits which provided a majority of the requested information and then supplement this response with a list of the statutes implicated in each of the lawsuits." This is not our recollection of the conversations. We noted in those discussions that not all of the lists provided by the DOJ contained all of the information requested – in particular, identification of the statutes implicated in each of the lawsuits. Committee staff encouraged the Department to send what was available and indicated they would determine later whether any additional information was necessary. The Department did not commit to providing any further information and, in fact, has no other comprehensive source of such information available. As we noted in our June 20 letter, that letter and the enclosed DOJ tracking lists constituted our complete response to the Committee's May 4 request.

In a third conversation with your Committee staff on July 29 we explained that devoting staff time and departmental resources to searching publically available court dockets to determine the statutes at issue for each of the many hundreds of cases would be extremely burdensome for the Department. Committee staff agreed that this kind of search was not necessary at this time. We agreed to your staff's request that as a next step, the Department will again contact DOJ to

confirm that there is no readily available source for the information you've requested and to determine whether there are any alternative sources of information, such as statistics kept, that would fulfill the Committee's information needs. We will report to the Committee as soon as we have further definitive information from DOJ.

Request for Information Related to Stream Protection Rule

Another July 18 letter addressed responses to your requests to the Office of Surface Mining, Regulation and Enforcement and the Department regarding OSM's ongoing Stream Protection rulemaking, and seeks certain information requested in your February 10, 2011, letter to OSM and April 1, 2011, letter to the Department.

Your letter expresses your concern that in producing "some limited information and documents" and in making "representations to Committee staff about forthcoming productions and documents," the Department "has largely failed to provide a written response to a number of requests." In responding, let me first summarize our responses delivered to the Committee so far, two of which we now understand from Committee staff were apparently misrouted after delivery and never received by the appropriate staff:

- On June 17, the Department responded in writing to the February 10, 2011 letter, providing documents in response to items numbers 2 and 3 and explaining that item 1, in which the Committee seeks information on meetings and correspondence between the Director's office and other federal agencies and offices, implicates important Executive Branch confidentiality interests concerning deliberations on ongoing rulemaking proceedings, which constrain the Department's ability to respond.
- In letters dated May 13 and June 17, the Department responded in writing regarding three items of the four items listed in your April 1, 2011 letter and providing documents and information and explaining that item 2 implicated important Executive Branch confidentiality interests and that documents responsive to the remaining item (item 1) would be forthcoming.
- In letters dated March 1, April 6, and May 13, the Department provided written responses to the Committee's February 8 letter regarding the same rulemaking and provided the Committee both information and documents:
- OSM Director Joe Pizarchik has repeatedly offered to again make himself personally available to discuss where OSM was in the rulemaking process and the basis for the actions under consideration at the time, as well as to update you as OSM moves forward in the process (March 1, 2011, response; May 13, 2011, response; June 17, 2011, response). To our knowledge, the Committee has not taken the Director up on his offers.

In summary, the Department has worked diligently to accommodate the Committee's oversight interest in the Stream Protection rulemaking and related matters and responded in letters dated March 1, 2011; April 6, 2011; May 13, 2011; and June 17, 2011 with information and over 10,000 pages of documents. We continue to collect, review and process and will soon be in a position to share additional documents responsive to the April 1, 2011 letter. In a July 29 phone conversation with Committee staff, the Department learned that the letters and accompanying information delivered to the Committee on June 17 and April 6 did not reach appropriate staff for review. Those letters and documents have been redelivered to the Committee.

In our July 29 conversation, Committee staff agreed that they would review those responses before determining what, if any, specific additional information needs exist regarding the February 10 letter and items 2 through 4 from the April 1 letter. The Department committed to begin production of documents responding to item 1 of the April 1 letter by August 5 and stated our hope to complete that production within one month.

In addition to providing further documents in response to this one item in the April 1 letter, we remain ready and committed to working with the Committee to accommodate any specific concerns articulated by the Committee regarding responses already provided in a manner that satisfies those concerns while respecting the Executive Branch's confidentiality interests and the Department's limited resources.

Request for Information Related to Inspector General Report

Finally, your third letter addresses your request for documents underlying the Report of Investigation on the Federal Moratorium on Deepwater Drilling issued by the Department's Office of Inspector General (OIG) in November 2010. In that report, the OIG found no intent to mislead the public after a thorough investigation of the edits to the Executive Summary of the 30-Day Report to the President. Furthermore, the IG found that the Department had adequately remedied any concerns by communicating directly with the experts, offering a formal apology, and publicly clarifying the nature of the peer review of the 30-Day Report.

As we have explained in conversations with Committee staff, the documents and information requested in item (c) of your April 25 letter relate directly to the OIG's conduct of its investigation and are in the possession of the OIG. Through discussions between the Office of the Solicitor and staff in the OIG, we understand that some of the documents requested in your letter have been provided to you by OIG staff. With this letter, we are providing on a disk those documents relating to the OIG investigation that are in our possession and which do not implicate important Executive Branch confidentiality interests: the unredacted OIG report and eleven attachments.

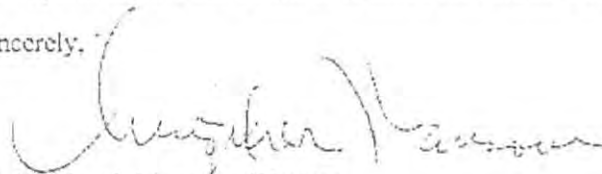
Regarding the remaining items in that letter, we have had several conversations with your staff seeking to fully understand the Committee's specific oversight interests in the hopes that we might better focus our search and accommodate the Committee's interests while still honoring

important confidentiality interests that serve to facilitate Executive Branch deliberations and respecting the limits of the Department's resources. Your staff have clarified that the request in item (e) regarding the "moratorium" references the 6-month moratorium on deepwater drilling in the Gulf of Mexico that was imposed and immediately followed the May 27, 2010 Report entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf." However, additional clarity regarding your information needs in this area as well as for the request as a whole would help expedite our Department's response to your request and provide you with the information your Committee needs to fulfill its oversight function.

To help facilitate that process and provide an initial response to the Committee, in our July 29 conversation, the Department invited Committee staff to the Department to review one attachment to the OIG report that the OIG withheld from the Committee because it implicates important Executive Branch confidentiality interests. We continue to believe that the attachment, an OIG Investigative Activity Report ("IAR"), raises important confidentiality interests of the Executive Branch, as it describes in detail confidential, deliberative communications between senior officials in the White House and the Department. However, as an accommodation, we are prepared to share this OIG document with the Committee at this time in order to meet the Committee's information needs. Your staff agreed that this offer was a good step toward meeting the information needs of the Committee and that review has been scheduled for tomorrow, August 2. At the request of your staff, the Department agreed to provide an index of the remaining withheld attachments to the IG report. That index will be provided to your staff on August 2 when they arrive at the Department to review the IAR. Further, your staff committed that if the Committee has further information needs after reviewing the IAR and the index, the Committee would work with the Department to narrowly focus the Committee's request in a manner that respects Executive Branch confidentiality interests and the Department's limited resources.

We remain open to further discussion of this matter, as well as the status of the ongoing processing of these documents and any additional means of accommodation with your staff. We are hopeful that we can continue to move forward in a mutually respectful relationship.

Sincerely,



Christopher J. Mansour, Director
Office of Congressional and Legislative Affairs
U.S. Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 29 2011

The Honorable Doc Hastings
Chairman,
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

At the request of your staff, we are retransmitting to you a set of documents responsive to your letter of February 10, 2011, to the Office of Surface Mining, Reclamation and Enforcement, and to questions 3 and 4 of your April 1, 2011, letter to Secretary Salazar seeking documents in information related to OSM's revision of the Stream Protection Rule.

As indicated on the enclosed Hand Carry sheet, these documents were originally transmitted to your office, via courier, on June 17, 2011, and receipt of the documents was acknowledged with the signature of a member of your staff.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-1403.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosures

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TODD YOUNG
CHIEF OF STAFF

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

July 18, 2011

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JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240-0001

Dear Mr. Secretary:

As you are aware, the Committee on Natural Resources (Committee) is actively investigating issues surrounding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). Through series of letters to the OSM and the Department of the Interior (DOI), the Committee has requested information and documents relating to the revision of the Rule and the economic impact of the Rule. Under the Rules of the House of Representatives, the Committee has general and continuing oversight and investigative authority over the subject matter of the activities, policies, and programs of DOI. DOI has the responsibility and obligation to be responsive to requests for information from this Committee so it can fulfill its Constitutional oversight duties. While some limited information and documents have been produced and DOI has made representations to Committee staff about forthcoming productions of documents, DOI has largely failed to provide a written response to a number of requests. This failure to comply is all the more troubling as DOI continues to aggressively pursue a rewrite of this regulation.

Specifically, DOI has failed to provide the Committee a written response for the following items as requested by letter dated February 10, 2011, to OSM:

Please provide copies of information on meetings and all correspondence including emails, letters, faxes, and phone logs between your office, and the following federal agencies and offices, states and non-governmental organizations:

1. Federal Agencies and Offices:

- Ms. Carol Browner, White House Office of Energy and Climate Change Policy
- Ms. Lisa Jackson, Administrator of the Environmental Protection Agency (EPA)
Mr. Peter Silva, Assistant Administrator Office of Water - EPA
Mr. Bob Sussman, Deputy Administrator - EPA
Mr. Greg Peck, Chief of Staff, Office of Water - EPA

- Ms. Nancy Sutley, Chair of the Council on Environmental Quality (CEQ)
- Mr. Michael Boot, Associate Director for Land and Water Ecosystems - CEQ
- Mr. Amelia Salzman, Associate Director for Policy Outreach – CEQ
- Mr. Ken Salazar, Secretary of the Interior
 - Mr. David J. Hayes, Deputy Secretary
 - Mr. Steve Black, Counselor to the Secretary
 - Ms. Hilary Tompkins, Solicitor of the Interior
 - Ms. Rhea Suh, Assistant Secretary, Policy Management and Budget
 - Mr. Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks
 - Ms. Wilma Lewis, Assistant Secretary, Land and Minerals Management
 - Ms. Anne Castle, Assistant Secretary, Water and Science
 - Mr. Larry Echo Hawk, Assistant Secretary, Indian Affairs
 - Mr. Jonathan Jarvis, Director, National Park Service (NPS) and/or other NPS employees
 - Mr. Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service (FWS) and/or other FWS employees
 - Ms. Marcia McNutt, Director, U.S. Geological Survey and/or other USGS employees
 - Mr. Mike Connor, Commissioner, Bureau of Reclamation
 - Mr. Bob Abbey, Director, Bureau of Land Management (BLM) and/or other BLM employees
- Ms. Jo Ellen Darcy, Army, U.S. Assistant Secretary of the Army (Civil Works)
- Ms. Meg Smith, Chief, Regulatory Program, Army Corps of Engineers

2. States:

- Alabama
- Indiana
- Kentucky
- New Mexico
- Utah
- Texas
- Virginia
- West Virginia
- Wyoming

3. Non-governmental Organizations:

- Appalachian Citizens Law Center
- Appalachian Voices
- Earthworks
- Keeper of the Mountains
- Kentuckians for the Commonwealth
- National Parks Conservation Association
- Northern Plains Resource Council
- Ohio Valley Environmental Coalition

- Save Our Cumberland Mountains
- Sierra Club
- Southern Appalachian Mountain Stewards
- Southern Utah Wilderness Alliance
- Waterkeeper Alliance
- West Virginia Highlands Conservancy
- WildEarth Guardians

A complete written response was to be provided to the Committee no later than March 18, 2011.

Further, DOI has failed to provide the Committee a written response for the following items as requested by letter dated April 1, 2011, to DOI.


1. Any and all documents and communication relating to concerns, discussions, comments, or questions regarding the quality of the Contractor's or any of its sub-contractor's work from May 1, 2010 to the present;
3. A list of all individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and
4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

A complete written response was to be provided no later than April 15, 2011.

Given DOI's failure to meet these previous deadlines, we request that a complete written response be provided to the Committee no later than August 1, 2011. 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 detailing why full compliance is not possible. Further, 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 recipient; and (e) the relationship of the author and recipient to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are ultimately up to the discretion of the Committee. 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 deadlines set out in the original requests, shall be produced immediately upon location or discovery subsequent thereto. Please be advised, under the Rules of the House of Representatives, the Committee can compel the production of documents.

If you have any questions about this matter or to make arrangements for production, please do not hesitate to contact Traci Rodriguez, Senior Counsel, Office of Oversight and Investigations, or Tim Charters, Staff Director of the Subcommittee on Energy and Mineral Resources. We look forward to your timely response.

Sincerely,



Doc Hastings
Chairman
Natural Resources Committee



Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 17 2011

The Honorable Doc Hastings
Chairman,
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter transmits the final set of documents responsive to your letter of February 10, 2011, to the Office of Surface Mining, Reclamation and Enforcement's Director Joseph G. Pizarchik, and to questions 3 and 4 of your letter of April 1, 2011, to Secretary Salazar seeking documents and information related to OSM's revision of the Stream Protection Rule. This response follows previous letters sent to you by Director Pizarchik on March 1, April 6, and May 13, 2011. With this response and the three previous responses, the Department has answered your requests made in the February 8 and February 10, 2011, letters and in questions 2, 3 and 4 of the April 1, 2011, letter. The Department continues to process documents and information in response to question 1 from the April 1 letter and will begin production of documents as soon as possible.

Enclosed are two CDs, with accompanying indices, containing responsive material.

The first CD, titled "00025866_Hastings_001," contains documents responsive to requests in your February 10, 2011, letter to Director Pizarchik for information on meetings and correspondence between the Director's office and states and non-governmental organizations:

This CD contains 17 documents consisting of 69 pages. None of the documents have been redacted.

The second CD, titled "00027094_Hastings_001," contains documents responsive to requests numbered 3 and 4 in your April 1, 2011, letter to Secretary Salazar:

3. A list of individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and

4. Copies of agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

This CD contains 18 documents consisting of 169 pages. None of the documents have been redacted.

With regard to the February 10, 2011, letter, as the Department has stated in previous written and staff level communications, your requests into an ongoing rulemaking process implicate important confidentiality interests for facilitating internal agency deliberations and constrain the Department's ability to provide answers to several of the requests for analysis and documents. These constraints apply to the request made in your February 10, 2011, letter for information on meetings and correspondence between the Director's office and other federal agencies and offices. However, the Department understands and respects your interest in this important topic and as always the Director is ready to brief you on actions being undertaken by OSM as it moves forward with its rulemaking effort.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-1403.

Sincerely,



Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosures



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, D.C. 20510

MAY 13 2011

Dear Mr. Chairman:

This letter transmits additional information and documents in response to your request of February 8, 2011, concerning stream protection regulations and the supporting Draft Environmental Impact Statement (DEIS) under development by the Office of Surface Mining Reclamation and Enforcement (OSM). This serves to supplement information I provided to you on March 1, 2011, and April 6, 2011.

Interior Secretary Ken Salazar has asked that I also respond to your and Subcommittee Chairman Lamborn's April 1, 2011, letter to him which requests information specific to communications between the Department and Polu Kai Services, LLC.

Enclosed are three discs containing documents responsive to your requests.

The CD labeled "00025637_Hastings_002" dated May 10, 2011, contains electronic copies of documents provided by OSM that are responsive to request number 4 in your letter of February 8, 2011:

Please provide me the analysis OSM has conducted on the specific impacts of the present rulemaking effort with regards to:

4. Environmental analysis and supporting scientific documentation.

These documents provide supporting scientific materials related to the environmental analysis for the Preliminary DEIS.

The CD labeled "00025637_Hastings_002" dated May 10, 2011, as well as the CD titled "00027094_Hastings_001_CONF" dated May 10, 2011, contain electronic copies of documents that are responsive to request number 6 in your February 8, 2011, letter:

6. What experience or credentials do the contractor and any subcontractor, possess with respect to coal mine planning and operations and coal markets?

The CD labeled "00025637_Hastings_002" dated May 10, 2011, contains a spreadsheet provided by the contractor indicating the names and credentials of those who prepared the early working

chapters of the Preliminary Draft EIS that were submitted to the OSM. The CD titled "00027094_Hastings_001_CONF" dated May 10, 2011, contains the Technical Proposal submitted by the OSM contractor, Polu Kai Services, LLC. This Technical Proposal contains, among other things, the experience and credentials of the personnel that constituted Polu Kai's proposed team. Please note that we are consulting under the Department's Freedom of Information Act regulations with Polu Kai regarding potentially confidential commercial information in the Technical Proposal, and have therefore watermarked the document we are sending you as "Confidential." We request your assistance in ensuring that the contents of this document remain protected and are not released to the public.

The CD labeled "00025637_Hastings_002" dated May 10, 2011, also contains electronic copies of documents that are responsive to request number 7 in your February 8, 2011, letter:

7. Would you provide the names and affiliation of the members of the DEIS Mining Analysis team and the Subject Matter Experts used in the informal elicitation process?

The CD includes a list provided to the OSM by the contractor identifying the contractor and/or subcontractor personnel that participated in the contractor's DEIS Mining Analysis team, as well as the contractor and/or subcontractor subject matter experts used in the contractor's informal elicitation process.

The CD labeled "00027094_Hastings_001" dated May 10, 2011, contains electronic copies of documents provided by the OSM that are responsive to request number 4 in your letter of April 1, 2011:

4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such order or agreements.

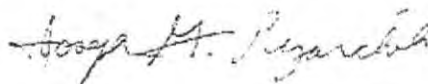
Included on the CD is a copy of the original contract between the OSM and Polu Kai Services, LLC, as well as the final modification (modification no. 5) dated March 24, 2011, that ended the contract between the OSM and Polu Kai Services, LLC. This mutually agreed-upon modification was in the best interest of both parties. The modification contains mutual non-disparagement language.

The OSM and the Department are continuing the process of indentifying documents which may be responsive to your requests in an effort to respect the Congressional oversight process while protecting the agency's deliberative rulemaking process.

Again, I thank you for your interest in the OSM's development of the Stream Protection Rule. I remain available to meet with you to discuss actions being undertaken by the OSM as it moves forward with its rulemaking effort, should that be of interest to you.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-4006 or Dirk Fillpot on my staff at (202) 208-2838. I look forward to the opportunity to be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph G. Pizarchik".

Joseph G. Pizarchik
Director

Enclosures

cc: Subcommittee Chairman Doug Lamborn



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



The Honorable Doc Hastings
Chairman
House Committee on Natural Resources
Washington, DC 20515

April 6, 2011

Dear Mr. Chairman:

Thank you for your recent letters in which you request a number of documents relating to stream protection regulations under development by the Office of Surface Mining Reclamation and Enforcement (OSM). This provides information to you in addition to that provided in my response of March 1, 2011.

Enclosed is a CD entitled 00025637-Hastings_001, dated April 6, 2011, that contains information provided by the OSM relevant to your request number 4 in your letter of February 8, 2011:

4. Environmental analysis and supporting scientific documentation.

The disc contains a list of documents, including website links, as appropriate, identified by OSM's contractor as materials the contractor reviewed in developing preliminary working chapters of the Draft EIS. Given the volume of documents in this list, OSM will be happy to provide to you promptly, upon request, hard copies of any documents you wish to receive that are not already available through a live internet link in the attached disc.

The OSM is continuing to search for information relevant to your remaining requests. We believe it is important to provide you with information as soon as it becomes available rather than waiting until all relevant searches have been completed. Therefore, we will supplement this response as determinations are finalized or additional documents are identified.

If you have any questions or need additional assistance, please do not hesitate to contact me or Dirk Fillpot, on my staff, at (202) 208-4006.

Sincerely,

Joseph G. Pizarchik
Director

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TODD YOUNG
CHIEF OF STAFF

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

April 1, 2011

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COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

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

Dear Secretary Salazar:

The Committee on Natural Resources (Committee) is actively investigating issues surrounding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). Through this letter, we request information and cooperation regarding communication between the Department of the Interior (DOI) and Polu Kai Services LLC (Contractor) and any of its subcontractors. Your response on behalf of DOI is important for the Committee to carry out its oversight and legislative responsibilities and to ensure that the rewrite of the Rule is consistent with state and federal laws.

Based on recent statements made by DOI officials, it appears as though the DOI purportedly expressed concerns about the quality of the Contractor's work, and information is sought to determine whether such concerns were expressed before, or only after, job loss impact information became publicly known through media reports. We also understand that as part of the Contractor's scope of work, the Contractor analyzed several different economic impact scenarios including the effect on coal mining and job loss at risk from the proposed Rule.

We request the following items:

1. Any and all documents and communication relating to concerns, discussions, comments, or questions regarding the quality of the Contractor's or any of its sub-contractor's work from May 1, 2010 to the present;
2. Any and all documents and communication relating to the economic impact or potential job loss estimates or figures from October 1, 2010 to the present;
3. A list of all individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and
4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

The Honorable Ken Salazar
April 1, 2011
Page 2 of 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.

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, maps, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, 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.

We expect a complete written response to be provided to the Committee no later than April 15, 2011.

The staff contact on this matter is Tim Charters, Staff Director, Subcommittee on Energy and Mineral Resources. Any communication must be made in writing via email to Tim.Charters@mail.house.gov or fax, at (202) 225-5255, or letter to:


Chairman Doc Hastings
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth HOB
Washington, D.C. 20515

ATTN: Tim Charters

Thank you in advance for your cooperation with the Committee in its review of this matter.

Sincerely,

Doc Hastings
Chairman
Natural Resources Committee


Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



MAR - 1 2011

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letters dated February 8, 2011, and February 10, 2011, both of which concern rule revisions that the Office of Surface Mining Reclamation and Enforcement (OSM) is undertaking on the Stream Protection Rule. I appreciate your interest, and the opportunity to respond to your concerns.

In both letters, you request a number of specific documents. The OSM is working to process your request for documents and information and will respond to you as soon as possible.

You also raise, however, a number of questions related to OSM's current rulemaking efforts. First, I assure you that there is no new Stream Protection Rule yet in place. At this stage, OSM has not completed a draft of the proposed rule. When it has completed the proposed rule, OSM will publish it for public comment before finalizing the rule. Likewise, OSM has not yet completed a draft of the Environmental Impact Statement (EIS) related to the rule changes. Once complete, the Draft EIS, too, will be available for public comment.

You ask why OSM is working to replace the Stream Buffer Zone Rule adopted in 2008. On December 12, 2008 (73 FR 75814-75885), OSM published a final Stream Buffer Zone Rule. This rule was challenged in District Court, and the Department of the Interior entered into a settlement agreement staying that litigation. That settlement agreement also established timeframes for development of revised regulations. While working to meet those timeframes, OSM has sought to conduct its regulatory process in an open and transparent manner, and to provide the public and interested states with the opportunity for early involvement. In November of 2009, OSM issued an advance notice of proposed rulemaking (74 FR 62664). Although not required by law, this step was undertaken to solicit early public opinion on issues that ought to be addressed in the regulation. The advance notice, which generated over 32,000 public comments, sought public input on ten options for revising the 2008 rule. Moreover, OSM conducted 15 stakeholder outreach sessions with a broad cross-section of stakeholders, including state and tribal regulatory authorities, industry, environmentalists, and the United Mine Workers of America, to obtain further input. This process, which was not part of the 2008 rulemaking, continued our practice of soliciting full public input and participation on the various options the bureau should consider and address.

In April of last year, OSM sought initial public input for the development of a Draft EIS. This process included nine public scoping meetings on options to be considered in the EIS. In June 2010, OSM shared with the states and the public information regarding possible alternatives that could be considered for the rule.

At this point in developing the Draft EIS, OSM is still in the information-gathering phase. The OSM is reviewing a preliminary, partial draft prepared by a contractor, as well as considering comments it has received from cooperating states. OSM shared the early, contractor-generated draft chapters of the Draft EIS with the cooperating states in a continuation of its effort to be more open and transparent in its rulemaking process. As you reference in your letter, these contractor drafts were recently made public. Per your request, attached please find the copies of the contractor's first draft of Chapters 1 through 4 of the Draft EIS that prematurely were made public last month. These draft documents are not official OSM documents and do not reflect either the official views of OSM or of the Department of the Interior.

The final Draft EIS will be based on reliable, accurate information, and OSM anticipates publishing the draft later this year. The published Draft EIS will contain a set of alternatives that will have been formally reviewed through a full EIS process, with public input and engagement.

Your letter of February 8, 2011, also asks a number of specific questions regarding the effect of the proposed rule. Because OSM is still in the process of determining the content of the proposed rule, as well as developing the information necessary to assist in the bureau's decision making, it is premature to address specific questions you pose in your February 8 letter, such as the effect of the rule on underground longwall mining. I very much appreciate the concerns you raise regarding potential impacts on jobs, workers and communities. Because the information upon which a proposed rule will be based is still being developed, OSM is not yet at a stage to be able to provide accurate estimates on job impacts. The numbers contained in the published contractor drafts are not accurate.

Please be assured that as OSM moves forward, OSM will be seeking to create jobs, to provide for the coal supply essential to the Nation's energy requirements, and to protect the streams and other environmental assets so critical to the health and economic well-being of communities. The OSM will also ensure that any final rule will comply with all applicable law, including Executive Orders. Regarding your question about the process for selecting the contractor for preparing the Draft EIS, OSM followed the competition requirements under Section 8(a) of the Small Business Act, 15 U.S.C. 637(a), as provided for in Section 6.204(a) of the Federal Acquisition Regulation.

Regarding the cost to OSM of preparing the 2008 Stream Buffer Zone Rule, the 2008 rule was developed over a period of approximately four years using staff and contractor resources at various times during those years. The process used by OSM during that time did not track the costs for that rule separately from other rulemaking activities being undertaken by OSM during that same period. Therefore, OSM is unable to determine the separate cost for developing the 2008 Stream Buffer Zone Rule.


You also ask how much money OSM will be spending on its rewrite of that rule, and the source of those funds. The funds for staff, as well as travel, associated with OSM's current Stream Protection Rulemaking effort come from annual discretionary funds appropriated to OSM. In addition to annual appropriations, by letter dated June 16, 2010, to the Congressional Appropriations Subcommittees on Interior, Environment and Related Agencies, the Secretary requested a reprogramming of \$7.0 million of OSM's FY 2010 regulation and technology appropriated funds to support the EIS associated with the Stream Protection Rule.

The reprogramming was approved by the House and Senate Subcommittees, and the majority of that funding was awarded to a contractor in FY 2010 to prepare the EIS. As of February 8, 2011, the total expenditures for developing the Stream Protection Rule and related documents, including salary and travel, are approximately \$4.4 million.

Concerning costs to the states to implement the 2008 rule, no actual implementation costs have been incurred to date, as no states have yet implemented the requirements of that rule. As OSM is still in the process of developing the requirements and analysis for its proposed Stream Protection Rule, it is unable as yet to provide estimates as to potential costs to states to implement it.

In closing, OSM is still in the early stages of the full rulemaking process. The public, the states, and stakeholders will continue to play a central role at every appropriate step. I greatly appreciate your interest in the analysis upon which this rule will be based. Although that analysis is still being developed, I am available to meet with you to discuss where OSM is in the process, and the basis for actions under consideration. I am also available to update you as OSM moves forward in the process. Please do not hesitate to let me know if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph G. Pizarchik". The signature is written in a cursive style with a large initial "J" and "P".

Joseph G. Pizarchik
Director

Enclosure

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

February 10, 2011

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining, Reclamation and Enforcement
U. S. Department of Interior
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Director Pizarchik,

As you are aware the House Committee on Natural Resources is conducting an investigation into the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule."¹

As part of the investigation it is requested that the following be delivered to me no later than March 18, 2011. Please provide copies of information on meetings and all correspondence including emails, letters, faxes, and phone logs between your office, and the following federal agencies and offices, states and non-governmental organizations:

1. Federal Agencies and Offices:

- Ms. Carol Browner, White House Office of Energy and Climate Change Policy
- Ms. Lisa Jackson, Administrator of the Environmental Protection Agency (EPA)
Mr. Peter Silva, Assistant Administrator Office of Water - EPA
Mr. Bob Sussman, Deputy Administrator - EPA
Mr. Greg Peck, Chief of Staff, Office of Water - EPA
- Ms. Nancy Sutley, Chair of the Council on Environmental Quality (CEQ)
Mr. Michael Boot, Associate Director for Land and Water Ecosystems - CEQ
Mr. Amelia Salzman, Associate Director for Policy Outreach - CEQ
- Mr. Ken Salazar, Secretary of the Interior
Mr. David J. Hayes, Deputy Secretary
Mr. Steve Black, Counselor to the Secretary
Ms. Hilary Tompkins, Solicitor of the Interior
Ms. Rhea Suh, Assistant Secretary, Policy Management and Budget
Mr. Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks
Ms. Wilma Lewis, Assistant Secretary, Land and Minerals Management

¹ <http://edocket.access.gpo.gov/2010/pdf/2010-14727.pdf>

- Ms. Anne Castle, Assistant Secretary, Water and Science
- Mr. Larry Echo Hawk, Assistant Secretary, Indian Affairs
- Mr. Jonathan Jarvis, Director, National Park Service (NPS) and/or other NPS employees
- Mr. Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service (FWS) and/or other FWS employees
- Ms. Marcia McNutt, Director, U.S. Geological Survey and/or other USGS employees
- Mr. Mike Connor, Commissioner, Bureau of Reclamation
- Mr. Bob Abbey, Director, Bureau of Land Management (BLM) and/or other BLM employees
- Ms. Jo Ellen Darcy, Army, U.S. Assistant Secretary of the Army (Civil Works)
- Ms. Meg Smith, Chief, Regulatory Program, Army Corps of Engineers

2. States:

- Alabama
- Indiana
- Kentucky
- New Mexico
- Utah
- Texas
- Virginia
- West Virginia
- Wyoming

3. Non-governmental Organizations:

- Appalachian Citizens Law Center
- Appalachian Voices
- Earthworks
- Keeper of the Mountains
- Kentuckians for the Commonwealth
- National Parks Conservation Association.
- Northern Plains Resource Council
- Ohio Valley Environmental Coalition
- Save Our Cumberland Mountains
- Sierra Club
- Southern Appalachian Mountain Stewards
- Southern Utah Wilderness Alliance


The Honorable Joseph G. Pizarchik
February 10, 2011
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- Waterkeeper Alliance
- West Virginia Highlands Conservancy
- WildEarth Guardians

It is our understanding that the Department of the Interior is a customer of ZANTAZ. Please use the ZANTAZ software to identify and retrieve the information requested above.

Your cooperation and prompt response to this request is appreciated.

Sincerely,


Doc Hastings
Chairman

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

February 8, 2011

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining, Reclamation and Enforcement
U. S. Department of Interior
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Director Pizarchik,

Recent news reports have highlighted the significant job losses and economic impacts that could result from changes being considered by the Office of Surface Mining (OSM) to fifteen elements of its coal mining regulation program. According to an official document obtained by the Associated Press, the agency's preferred "Stream Protection Rule" could cost at least 7,000 jobs and reduce production in 22 states. While it's incredibly troubling that the Administration is admitting its rule would eliminate thousands of jobs, it's even more alarming that these numbers appear to be conservative estimates. It is deeply concerning that OSM is proceeding with a sweeping rulemaking that will devastate our Nation's ability to produce energy, cripple state budgets, and destroy good paying jobs for tens of thousands of families around the country.

There are real questions about the need to revise these rules given that the original "Stream Buffer Zone Rule" was finalized just two years ago in December 2008 after a multi-year deliberative process that included extensive environmental analyses and public comment. OSM's first attempt to revoke this rule was stopped by the Courts. However, it's clear that OSM and the Administration never intended to let the 2008 rule stand as stated in OSM's June 18, 2010 Federal Register Notice: "we had already decided to change the rule following the change of Administrations on January 20, 2009."¹

Clearly the Administration has preconceived notions of the changes it wants to execute and is pursuing those goals on a self-imposed deadline without any adequate consideration of the impacts on workers, jobs or communities.

The Committee intends to conduct thorough oversight on this issue and the economic impacts of the proposed rule. Please provide me the analysis OSM has conducted on the specific impacts of the present rulemaking effort with regards to:

¹ <http://edocket.access.gpo.gov/2010/pdf/2010-14727.pdf>

1. Jobs and employment in coal mining, projected decreases in U.S. coal production and the impact on other industries and coal-dependent jobs as a result of this rulemaking.
2. Revenues shared with state and tribal entities, specifically estimates of losses related to AML funds for states and tribes and tribal revenue sharing through production royalties and lease bonus bids; and lost revenues from state severance and sales taxes.
3. Efforts by OSM to consider the impacts of this rulemaking to domestic electricity costs related to coal production declines identified in the EIS.
4. Environmental analysis and supporting scientific documentation.

Also, while your office quickly prepares that information, I would seek a response to the following questions no later than February 25, 2011:

1. The current rule, which OSM is attempting to revoke, was the result of years of public participation and the product of multiple state and agency involvement. Why is OSM under such tremendous haste to conduct such an overarching rulemaking to replace the current rule?
2. How many job losses does OSM consider acceptable in selecting a preferred alternative? Please state a maximum number.
3. OSM's draft EIS states that subsidence from underground longwall mining that impacts streams on the surface will be considered material damage and will therefore not be allowed. How many underground coal mining jobs are anticipated to be lost in each impacted state because of the proposal?
4. Has OSM considered pursuing a rulemaking that would help create jobs?
5. Does OSM plan to evaluate the rulemaking under the January 18, 2011 Executive Order 13563, "Improving Regulation and Regulatory Review?" In addition, how has OSM complied with Executive Order 13211 "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use"?
6. How did OSM select the contractor for preparing the draft EIS and what experience or credentials do the contractor and any subcontractor, possess with respect to coal mine planning and operations and coal markets?

The Hon. Joseph G. Pizarchik
February 8, 2011
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7. Would you provide the names and affiliation of the members of the DEIS Mining Analysis team and the Subject Matter Experts used in the informal elicitation process?
8. Considering that portions of the OSM's rule have been leaked to various media outlets, would you please provide the Committee with a complete copy of the draft rule and EIS?
9. How much money was spent by OSM on the preparation of the 2008 rule throughout its development? How much money will OSM be spending on this rewrite of that rule and what is the source of these funds?
10. What is your estimate of the costs to the states to implement the 2008 rule and the additional money to implement the new rule?

The stakes are too high for the Administration to arbitrarily impose job-destroying policies and rewrite rules. OSM's hasty pursuit of new regulations that admittedly will destroy thousands of jobs will be examined by this Committee. A prompt response to these requests is appreciated.

Sincerely,



Doc Hastings
Chairman

Cc: The Honorable Ken Salazar, Secretary, Department of the Interior