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

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DAVID WATKINS  
DEMOCRATIC STAFF DIRECTOR

April 2, 2015

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

Dear Director Pizarchik:

On February 23, 2015, eleven state agencies<sup>1</sup> that had previously entered into a Memorandum of Understanding (“MOU”) with the Office of Surface Mining Reclamation and Enforcement (“OSM”) concerning the development of an environmental impact statement (“EIS”) for the new Stream Protection Rule (“SPR”) sent a letter to you expressing concern about their role as cooperating agencies.<sup>2</sup> According to the letter, OSM has “not provided for meaningful participation by the cooperating agency states” and has repeatedly limited their involvement in the EIS development process. The state agencies also allege that when OSM has provided portions of the draft EIS for them to review, the constrained timeframes imposed by OSM have made it impossible to provide substantive comments.

In your March 17, 2015 response to the state agencies, you offered to meet with the cooperating state agencies in order to “update [them] on the current draft EIS.”<sup>3</sup> Such an offer, which was only made after repeated complaints by the states and after several cooperating state agencies withdrew from the MOU, is overdue and falls far short of OSM’s obligations as the lead agency.

<sup>1</sup> The eleven state signatories are: Alabama, Indiana, Kentucky, Montana, New Mexico, Ohio, Texas, Utah, Virginia, West Virginia, and Wyoming. Alabama, Utah, and New Mexico recently withdrew from the MOU.

<sup>2</sup> Letter from Cooperating State Agencies, to Joseph Pizarchik, Director, Office of Surface Mining Reclamation and Enforcement (Feb. 23, 2015).

<sup>3</sup> Letter from Joseph Pizarchik, Director, Office of Surface Mining Reclamation and Enforcement, to Cooperating State Agencies (Mar. 17, 2015).

Regulations governing rulemaking subject to the National Environmental Policy Act (“NEPA”) require the lead agency to “request the participation of each cooperating agency in the NEPA process at the earliest possible time” and “meet with a cooperating agency at the latter’s request.”<sup>4</sup> A cooperating agency is defined as “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal.”<sup>5</sup> State agencies may also become cooperating agencies by agreement with the lead agency.<sup>6</sup>

Moreover, the Department’s own regulations require the lead agency to “collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues related to their jurisdiction and special expertise,” and to do so “*throughout* the development of an environmental document.”<sup>7</sup> Consistently failing to include cooperating agencies throughout the EIS drafting process – and then making a disingenuous offer to “update” the states after the rule has already been submitted to the Office of Management and Budget – is grossly insufficient and does not satisfy OSM’s legal obligations as the lead agency.

Despite these regulations, which clearly give cooperating agencies the right to ongoing participation, Secretary Jewell recently testified that the states would have an opportunity to comment on the Stream Protection Rule “when [the] rule is released and we’re in the public comment period.”<sup>8</sup> Secretary Jewell’s testimony and your March 17, 2015 letter exemplify the Department’s blatant refusal to include the cooperating agencies, as the regulations require.

The Committee on Natural Resources has broad jurisdiction over mineral resources and mining laws, mining interests generally, and the National Environmental Policy Act.<sup>9</sup> In order for the Committee to better understand how OSM, as the lead agency for the SPR, has endeavored to comply with NEPA regulations pertaining to cooperating agencies, please provide the following documents and information by noon on April 17, 2015:

- 1) Copies of all memoranda of understanding or other agreements OSM has entered into with state agencies pursuant to 40 C.F.R. § 1508.5 concerning the Stream Protection Rule;

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<sup>4</sup> 40 C.F.R. § 1501.6.

<sup>5</sup> 40 C.F.R. § 1508.5.

<sup>6</sup> *Id.*

<sup>7</sup> 43 C.F.R. § 46.230 (emphasis added).

<sup>8</sup> *Department of the Interior Budget Hearing Before the Subcomm. on Interior, Environment, and Related Agencies of the H. Comm. on Appropriations*, 114th Cong. (2015) (statement of Sally Jewell, Secretary, Department of the Interior). Chairman Hal Rogers of the Committee on Appropriations specifically asked about OSM’s lack of cooperation with state agencies.

<sup>9</sup> House Rule X, clause 1(m).

- 2) Copies of all correspondence, emails, or other communications between cooperating agencies and OSM concerning participation in the NEPA review process for the SPR;
- 3) Copies of all emails or other communications, memoranda, legal analysis, or other documentation concerning the cooperating agency status of the eleven states that signed the February 23, 2015 letter;
- 4) Copies of all emails or other communications, memoranda, legal analysis, or other documentation concerning OSM's inclusion of cooperating agencies in the NEPA process for the SPR;
- 5) Copies of all notes, records, meeting agendas, or other documentation of every meeting, including conference calls, between OSM and cooperating agencies between April 1, 2010 and the present;
- 6) Copies of all reports provided to the Council on Environmental Quality ("CEQ") concerning cooperating agencies for the SPR NEPA review.

Enclosed with this letter are instructions and definitions for responding to this request. Please have your staff contact Jessica Conrad, Counsel for the Subcommittee on Oversight and Investigations, at (202) 225-7107 with any questions.

Sincerely,



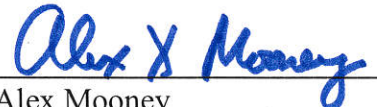
Rob Bishop  
Chairman  
Committee on Natural Resources



Louie Gohmert  
Chairman  
Subcommittee on Oversight & Investigations



Doug Lamborn  
Chairman  
Subcommittee on Energy and  
Mineral Resources



Alex Mooney  
Member of Congress  
Second District of West Virginia

cc: Raúl Grijalva, Ranking Member, Committee on Natural Resources  
Debbie Dingell, Ranking Member, Subcommittee on Oversight & Investigations  
Alan Lowenthal, Ranking Member, Subcommittee on Energy and Mineral Resources



## Responding to Committee Document Requests

### A. Definitions

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

### B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employers, 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