



United States Department of the Interior

OFFICE OF THE SECRETARY

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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 printed 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