Congress of the United States
Washington, DC 20515

April 06, 2011

The Honorable Thomas Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary Vilsack:

In the Fall 2010 Unified Agenda of Regulatory and Deregulatory Actions, the U.S. Forest Service indicated its intention to promulgate new regulations on the "Management of National Forest System Surface Resources with Privately Held Mineral Estates." We are concerned that this rulemaking will dramatically increase the regulatory burden on oil and natural gas exploration and production activities on millions of acres of private mineral estates on National Forest lands. We are especially concerned and alarmed that the Forest Service has claimed in the Unified Agenda statement that small business entities will not be adversely affected; that the rule is not major; that it is "[n]onsignificant;" and that a Regulatory Flexibility Analysis is not required by the agency. As explained below, we find these claims by the Forest Service to be unsupported by publicly available information and recent legal developments.

The Forest Service initiated the rulemaking process on December 29, 2008, when it published an Advanced Notice of Proposed Rulemaking in the *Federal Register*. During the rulemaking process numerous comments were submitted by interested parties opposing any increase in the regulatory burden. These concerns are particularly well founded, especially now during a time of a fragile economic recovery and rapidly escalating energy costs. Instead, the federal government should be undertaking every measure possible to increase our domestic energy supply, reduce our dependence on foreign energy, decrease our staggering trade deficit, while retaining and creating much needed jobs.

The development of a new federal permitting regime would result in massive multi-year delays of much needed additional domestic oil and natural gas production while adding significant costs for small and large domestic energy producers. In addition to harming the national economy, this would needlessly affect local and state governments depriving them of the economic benefits of oil and natural gas development and production. This is particularly true in rural communities and states such as Pennsylvania, Ohio, West Virginia, Virginia, Kentucky, Arkansas, Michigan, North Dakota, Louisiana and Texas.

Should USDA proceed with this rulemaking, in the spirit of transparency that the Administration often touts, a comprehensive economic and social impact analysis must be conducted. This review should be provided to the public so that all stakeholders can fully understand the potential impacts.

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Additionally, we have considerable concerns that the Forest Service does not have the legal authority to carry out this rulemaking. Therefore, specifically what authority does the Forest Service believe it has to warrant this process? As you know, a federal court has declared that the Forest Service lacks the regulatory authority to impose a federal permitting approval regime over private mineral estates on National Forest lands. In *Minard Run Oil and Pennsylvania Independent Oil and Gas Association v. U.S. Forest Service, et al.,* on December 15, 2009, the Honorable Sean McLaughlin of the U.S. District Court for the Western District of Pennsylvania, granted a preliminary injunction against the U.S Forest Service and the Sierra Club, barring a Forest Service approval process created by an April 9, 2009 out-of-court Settlement Agreement. That preliminary injunction remains in effect while an appeal is pending. However, this substantial uncertainty provides even more reason for the Forest Service to immediately halt this arbitrary rulemaking.

Sincerely,

Doc Hastings
Chairman
House Natural Resources Committee

Doug Lamborn
Chairman
Energy &Mineral Resources Subcommittee

Frank Lucas
Chairman
House Agriculture Committee

Glenn 'GT' Thompson
Chairman
Conservation, Energy & Forestry Subcommittee

cc: U.S. Forest Service Chief Thomas Tidwell
Dr. Winslow Sargeant, Chief Counsel for Advocacy, U.S. Small Business Administration
Jack Lew, Director, Office of Management and Budget