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

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 the 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 response to date and statements contained in the August 1st letter concerning the DOI's Office of Inspector General's Report of Investigation on the Federal Moratorium on Deepwater Drilling (Report of Investigation). The Committee's original request to DOI for documents and information relating to the Report of Investigation was made by letter dated April 25, 2011 and the request was reiterated in the Committee's July 18, 2011 letter.

The Committee appreciates DOI's statement in its August 1st letter that DOI recognizes this Committee's legitimate and important oversight responsibilities and pledge to work with the Committee to provide materials responsive to the Committee's needs. It is important that this recognition and pledge result in actual compliance. The Committee has reservations based on DOI's actions to date and failure to produce any responsive documents to the Committee's April 25th letter until August, months after the May 13th deadline imposed by the Committee. To avoid any confusion, your August 1st letter reference to a production of approximately 10,500 pages of documents by DOI concerns a separate document request the Committee has made to DOI regarding OSM's revision of the 2008 Stream Buffer Zone Rule. The Committee notes that the disc that was produced to the Committee on August 1, 2011 relating to the Moratorium contains only an unredacted version of the OIG's report, a report that the OIG provided the Committee in May. The disc does not contain the eleven attachments that your letter states were also being produced to the Committee.

In the August 1st letter, DOI noted that there have been conversations with Committee staff seeking clarity regarding request item (e) as set forth in the Committee's April 25th letter. On May 19, 2011, the first telephone conference call was held between DOI and Committee staff regarding the Committee's April 25th letter. During this call, DOI sought clarification about request item (e) and that Committee staff provided clarification via email that same day, noting that "in item 'e,' we are referring to 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.' This safety report was the subject of the Inspector General's Report of Investigation – Federal Moratorium on Deepwater Drilling Case No. PI-PI-10-0562-I." Despite that prompt clarification, no documents or information was forthcoming from DOI nor were there any further requests for clarity until after the Committee's letter of July 18th. These requests for further clarity came on the July 29th telephone call and DOI's letter of August 1st. While the Committee encourages DOI to seek clarification when necessary, it is disappointing for DOI to seek clarification of requests only after the original document production deadline has passed and the Committee has been forced to send a follow up letter. It creates the impression that DOI is not truly seeking clarification, but is engaged in unwarranted delay. If DOI has specific requests for clarification and explanation, they should be stated promptly. In reviewing each item request made by the Committee, they are stated plainly and clearly. The fact that an item request may require the production of a large number of documents or documents that DOI prefers not to produce does not make the request unclear.

Also during the July 29th conference call between DOI and Committee staff, Committee staff was invited to review the OIG Investigative Activity Report (IAR) and an index of withheld attachments to the IG Report. The IAR and the documents listed on the index had been previously withheld as privileged materials by DOI's Acting Inspector General based on instructions received from DOI's Office of the Solicitor. The Committee staff's review occurred on August 2, 2011. The Committee believes that this was a positive step taken by DOI to comply with the Committee's requests.

The Committee, however, disagrees with the assertion contained in your August 1st letter that after the review of the IAR, Committee staff had "committed that if the Committee ha[d] 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." As indicated in an email sent to DOI staff prior to the review and consistent with July 29th conversation held between Committee staff and DOI, the Committee fully reserved the right to continue to seek a more complete response to the document request contained in the Committee's April 25th letter and referenced in the Committee's July 18th letter. The email also noted that although the Committee was aware of the DOI's concerns about Executive Branch confidentiality interests, the Committee had not agreed to limit its original request nor was this limited review a substitute for complete compliance.

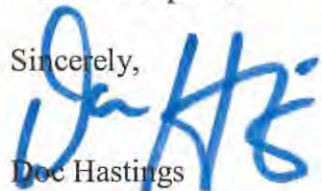
Cognizant of DOI's concerns, the Committee has previously provided DOI instructions in the April 25th letter on how to produce responsive documents that may contain information that implicate DOI's confidentiality concerns. If compliance with the document request cannot be

made in full, compliance shall be made to the extent possible and shall include an explanation why full compliance is not possible. *See* Instructions, ¶7. 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. *See* Instructions, ¶8. This request is continuing in nature and applies to any newly discovered information. *See* Instructions, ¶11. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the deadline set out in the original request, shall be produced immediately upon location or discovery subsequent thereto. *Id.*

Following the review of the IAR and index on August 2nd, Committee staff did provide some guidance to DOI staff about some specific items to help DOI focus its search for responsive documents and information. Committee staff also made it abundantly clear that this guidance did not limit the requests outlined in the April 25th letter nor was production of this focused information considered DOI's complete response to the Committee's requests. Specifically, DOI was requested to provide further details to the index Committee staff reviewed, such as who received carbon copies of the Attachment 13 and Attachment 15; identify who was involved in the editing of the drafts exchanged between DOI and the White House on May 26, 2011 and May 27, 2011; the surname of the Draft 30-Day Report (all versions); and any and all emails exchanged between DOI and the engineers after the Report "Increased Safety Measures for Energy Development on the Outer Continental Shelf" was made public. The Committee asks that this information be received by the Committee no later than August 29, 2011 and include the eleven attachments that DOI failed to include on the disc produced to the Committee on August 1st.

We look forward to DOI producing additional documents and fulfilling its obligation to respond to Committee's requests.

Sincerely,



Doc Hastings
Chairman
Natural Resources Committee



Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources