

DOC HASTINGS, WA
CHAIRMAN
DON YOUNG, AK
JOHN J. DUNCAN, JR., TN
LOUIE GOHMERT, TX
ROB BISHOP, UT
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
PAUL C. BROUN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHEK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIFTON, CO
PAUL A. GOSAR, AZ
RAÚL R. LABRADOR, ID
KRISTI L. NOEM, SD
STEVE SOUTHERLAND II, FL
BILL FLORES, TX
ANDY HARRIS, MD
JEFFREY M. LANDRY, LA
CHARLES J. "CHUCK" FLEISCHMANN, TN
JON RUNYAN, NJ
BILL JOHNSON, OH

TODD YOUNG
CHIEF OF STAFF

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

August 15, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DEFazio, OR
ENI F.H. FALCOMAVEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAÚL M. GRIJALVA, AZ
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILILI CAMACHO SABLAN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJÁN, NM
JOHN P. SARBANES, MD
BETTY SUTTON, OH
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JOHN GARAMENDI, CA
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 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

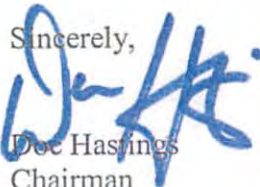
offices. Nor has DOI followed these procedures in response to Request 2 as contained in the Committee's letter of April 1st that requested documents and communications relating to the economic impact or potential job loss estimates or figures from October 1, 2010 to the present. Instead, DOI has continually 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