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

April 25, 2012

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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:

One year ago today, the Department of the Interior (“Department”) was first asked to provide documents and information relating to the Obama Administration’s decision imposing a drilling moratorium and its drafting of a May 2010 report entitled, “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (“Drilling Moratorium Report”). For 366 days, the Department has refused to cooperatively comply with repeated requests for this information, notwithstanding President Obama’s pledges of openness and transparency. Now, with its April 10 and 13 response letters, the Department is in violation of an official subpoena.

The Department Has Not Complied with the Subpoena

The April 3, 2012 subpoena sought two categories of information comprising a narrow subset of the information previously sought from the Department for a year. The expectation was that the subpoenaed material would be readily producible by the Department.

After the subpoena was issued, you were quoted as saying, “The bottom line is I’m very comfortable with everything we did including the time out and reset button that we had to put in place in the Gulf of Mexico. ... So, you know, it’s that time of season in Washington, D.C., where congressional committees will spend their time going after issues that are not of significant importance ... [W]e will do everything we can to cooperate with the committee.”¹

In failing to comply with the subpoena, the Department’s official response does not live up to your publicly stated pledge of doing “everything we can to cooperate” and similarly fails to uphold President Obama’s pledge of unprecedented transparency by his Administration. It is very troubling that you characterize the drilling moratorium and the substantial toll it inflicted on

¹ See Politico, April 3, 2012 (<http://www.politico.com/news/stories/0412/74790.html#ixzz1sPreCzjO>).

the economy of the Gulf of Mexico and American energy production as not being of “significant importance.” Thousands of lost jobs and higher energy prices are serious and important, and the refusal to comply with an official Congressional subpoena examining these matters is even more serious.

In its noncompliant responses to the subpoena, the Department seeks credit for providing a limited number of documents that were first requested in April 2011. Many of the 229 documents the Department provided in response to the subpoena were redacted or missing attachments, in violation of the subpoena instructions. The Department continues to refuse to provide even an accounting of the documents it possesses and is continuing to withhold and refuses to release documents it has prevented the Inspector General from providing to the Committee.

If the Department is as comfortable in defending its action as publicly declared and reported in the news article, then it should cease its year-long effort to withhold documents and communications that will explain how the drilling moratorium decision was made and how the Drilling Moratorium Report was drafted and then edited in a manner that misrepresented that independent engineers had peer reviewed and supported the drilling moratorium. If the Department has nothing to hide, then it should stop hiding these documents and its decisions from appropriate Congressional oversight.

Committee’s Oversight Authority is Clear and Well Established

In its April 10 response to the subpoena, the Department inexplicably claims – after a year’s time, multiple conference calls, and eight request letters – not to fully understand the nature and purpose of the Committee’s oversight interest in this matter. On an April 16, 2012 conference call, Department staff again expressed uncertainty over the Committee’s oversight interest. The Department has willfully ignored and repeatedly misconstrued, first, the scope of the Committee’s oversight requests and, now, this subpoena by trying to limit their scope to communications with peer reviewers and a November 2010 Inspector General (“IG”) report into the editing of the Department’s Drilling Moratorium Report.

Please direct your attention to the oversight request letters sent to the Department on April 25, 2011, July 18, 2011, August 15, 2011, September 28, 2011, October 13, 2011, January 25, 2012, January 31, 2012, and February 23, 2012. As you will see, these letters in no way limit our oversight interest to documents related to the IG’s November 2010 report or communications with peer reviewers.

Since April 2011, the requests have been clear and consistent in requesting information from the Department that would allow an independent review of the circumstances surrounding the 6-month Gulf of Mexico drilling moratorium and the development of the Drilling Moratorium Report, including whether it was intentionally edited to incorrectly state the views of the peer reviewers.

There should be no confusion or further attempts to delay compliance with the subpoena with this baseless excuse. The Department should cease its efforts to misconstrue or obfuscate the clear focus and facts surrounding this oversight investigation. The subpoena is clear in stating the documents to be produced and disclosed by the Department.

Department's Additional Excuses for Not Complying are Without Merit

In failing to comply with the subpoena, the Department's April 10 response also questions the Committee's oversight authority in this matter. This criticism is without merit. Pursuant to House Rule X(1)(m), the Committee has broad oversight jurisdiction over the Department and its activities, particularly as it relates to energy production on federal lands, both onshore and offshore. Oversight of the Executive Branch is necessary for Congress to fulfill its responsibilities under the Constitution. Under House Rule X(2)(a)-(b), the Committee is responsible for conducting oversight to evaluate the application, administration, execution, and effectiveness of Federal laws under its jurisdiction and for considering enactment of changes in Federal law, the organization and operations of Federal agencies, and conditions or circumstances that may indicate the necessity of new or additional Federal legislation.

In its April 10 response, the Department also repeats the previously discredited claim it has made for many months that disclosure of the requested material would intrude upon Executive Branch deliberations. As the Department has been repeatedly informed for many months, this is not a legitimate justification for refusing to comply with Congressional oversight, and especially an official subpoena. There is a clear and compelling justification and need for Congress to acquire this information, especially considering the passage of time, the high-profile nature of the activities, and the seniority of the political appointees involved. Senior Administration officials and political appointees are not allowed to shield their communications from public view just because they may prove embarrassing, especially here where the economic harm caused by the drilling moratorium is so significant.

The Department's April 10 response also claims that this investigation is unnecessary given the IG's November 2010 report. The report in question was requested by five Republican members of this Committee who in July 2010 urged the IG to investigate the editing of the report and examine whether any laws were broken, who made the decision to misrepresent the views of the scientists, were the changes influenced by the White House, and were the changes recommended by outside groups, as news media accounts suggested. On November 8, 2010, the IG issued an 8-page report that "determined that the White House edit of the original DOI draft Executive Summary led to the implication that the moratorium recommendation had been peer reviewed by the experts."

Notably, the Department's April 10 response fails to mention that the IG admitted in a May 11, 2011 letter that, in preparing its November 2010 report, it was "unable to independently conclude whether the implications contained in the 30-Day Report were intentional or not." The IG's report left a number of questions unanswered and inadequately discussed the actual documents, drafts and communications surrounding this important issue and overall lack of transparency. Our April 25, 2011 request for information sought to answer these questions.

Despite the Department's assertions, the IG's abbreviated report into this matter does not excuse the Department from refusing to provide all of the documents covered by this subpoena.

Requests for Interviews with Department Personnel

On February 23, 2012, we requested that five current Department employees who were involved in the matters under investigation be made available for interviews by Committee majority staff. Only two of these individuals were previously interviewed by the IG, but each is expected to have personal knowledge relevant to this investigation.

On February 28, 2012, the Department acknowledged receipt of our request and said it expected to respond "more fully by the end of the week." We have not received any further response from the Department to this request for two months. We continue to seek the Department's cooperation in making these individuals, and others as may be necessary, available for interviews.

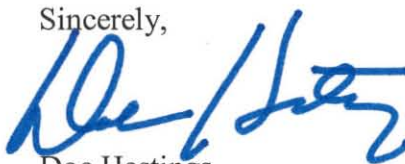
Full and Prompt Compliance is Expected

In its April 10 response, the Department offers to allow Committee staff to inspect two additional withheld documents. This offer of accommodation does not satisfy the subpoena, which directed that copies of these two documents and all other documents be provided to the Committee over two weeks ago.

That the documents in question may undermine the Administration's oft-stated goals of scientific integrity and transparency or embarrass senior Obama Administration officials does not absolve the Department from its responsibility to comply with Congressional oversight requests or this duly authorized and issued subpoena.

As has been explicitly expressed in multiple letters and conference calls, generalized claims of Executive Branch confidentiality interests, common law privileges, and Freedom of Information Act exemptions are not sufficient legal bases for withholding information from Congress or in response to a duly authorized and issued Congressional subpoena. We note that the Department's April 10 response fails to assert any Constitutionally based privilege and does not request the subpoena be held in abeyance pending an assertion of Executive Privilege by the President. Absent a valid claim of Executive Privilege for these documents, the Department has a duty to fully and promptly comply with the duly authorized and issued subpoena. I am prepared to initiate further action, should the Department continue to refuse to comply.

Sincerely,



Doc Hastings
Chairman