

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. TIPTON, 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
JON RUNYAN, NJ
BILL JOHNSON, OH
MARK AMODEI, NV

TODD YOUNG
CHIEF OF STAFF

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

January 25, 2012

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DeFAZIO, OR
ENI F.H. FALCOMAVAEGA, 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, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

For nearly one year, we've patiently and persistently sought the Department of the Interior's ("Department") compliance with our requests for documents, communications, and information related to the rewrite of the 2008 Stream Buffer Zone Rule ("Rule") by the Office of Surface Mining Reclamation and Enforcement ("OSM"). This is a serious matter that impacts the livelihood of entire communities and the jobs of thousands of coal miners across the nation, and the Department's failure to fully comply with repeated requests for information can no longer continue. This letter provides notice of our intent to move to compel cooperation and production of documents specified in this letter should they not be provided in the time requested.

I. Multiple Focuses of Oversight Investigation

This inquiry was originally initiated (by letter dated February 8, 2011) following public disclosure of analysis from the draft Environmental Impact Statement ("EIS") that the Rule rewrite would cause the loss of at least 7,000 existing jobs and economic harm across 22 states. Our focus on the Department's decision to undertake this sweeping, rushed rewrite of the Rule, and the economic impact it would cause, was expanded after the Department criticized and dismissed the contractor it had selected and hired to conduct this economic analysis. The existing Rule took five years of study and development to write and was published with the concurrence of the Environmental Protection Agency in 2008. We have very serious questions about how and why this rewrite was initiated and is to be completed on such a hastened schedule, how this rulemaking process itself is being managed including whether proper procedures are

being followed, the cost of this undertaking, and whether political implications of the rule are unduly influencing the process.

II. Department's Failure to Comply

The Department's response to this legitimate exercise of Congressional oversight authority has been extremely disappointing. Instead of prompt compliance, there is a pattern of dilatory tactics and non-responsiveness. Not a single deadline for the production of requested materials has been met. Despite months of effort, documents and communications requested multiple times have yet to be provided. On numerous occasions, we have requested that the Department produce documents and information, or as an accommodation to the Department, provide a detailed list identifying any withheld documents and the legal basis for withholding them. No such list has been produced. In response to questioning by Committee staff earlier this month, Department counsel said documents responsive to this inquiry had been collected as far back as February and March of last year, but that the documents remain un-reviewed and withheld. Department counsel was unable to provide even an estimate on the volume or type of documents being withheld.

Even more disturbing is the fact that the Department's efforts to collect documents and materials responsive to our April 1, 2011 letter failed to capture audio recordings of meetings and conversations between agency personnel and contractors hired to rewrite this federal regulation. It was only after the existence of these recordings were discussed in a November 18, 2011 hearing of the Subcommittee on Energy and Minerals that the Department acted to collect these materials, despite the recordings being in the possession of Department personnel since before February 2011. Based on information shared by the Department, we now understand there to be at least 43 digital audio recordings totaling 30 hours in combined length. The Department has, by their own estimation, been aware of these recordings for more than two months and still not provided them to us. It is alarming that the persons responsible for rewriting this Rule are the very same who failed to produce the audio recordings of their conversations months ago. Not only does this raise serious questions about the Department's willingness and ability to cooperate with this investigation, it also raises serious questions about the competence and motivations of those personnel empowered to rewrite a federal regulation that could destroy the jobs of thousands of Americans. The prompt production of these digital recordings is expected.

III. Department's Claims of Confidentiality and Privilege are Without Merit

To date, the Department has asserted only a generalized claim of an Executive Branch confidentiality interest as the reason for refusing to provide some requested material. As we expressed in our August 15, 2011 letter to you, this is not a legal basis for withholding information from Congress. The Department has failed to provide a detailed privilege log identifying the documents it is withholding in full or in part, and the legal basis that would justify applicability of a privilege to the withheld information, despite repeated requests for the Department to do so. An assertion of "important confidentiality interests of the Executive Branch" is not a recognized common law privilege. Furthermore, even if this claim could be

considered a privilege assertion, as we have noted on numerous occasions, claims of privilege are considered under Committee on Natural Resources Rule 4(h) and, similar to all common law privileges, are applicable only at the discretion of the Chairman. We expect the Department to provide the requested documents absent a valid claim of Executive Privilege by the President.

Further, the Department considers other withheld information to be protected from disclosure to Congress by the deliberative process privilege that is incorporated into FOIA exemption 5, 5 U.S.C. § 552(b)(5). As an initial matter, Department staff acknowledged on a January 14, 2012 telephone conference call that the Department may not rely on a FOIA exemption as a basis to withhold information from Congress. See 5 U.S.C. §552(d). For the deliberative process privilege to potentially apply, the information must be both predecisional and deliberative. See e.g., Petroleum Info. Corp. v. United States Dep't of Interior, 976 F.2d 1429, 1434 (D.C. Cir.). However, factual information generally is not considered to be deliberative and, therefore, is not protected by the privilege. See e.g., EPA v. Mink, 410 U.S. 73, 91 (1973). Furthermore, "The burden is on the agency to establish that all reasonably segregable portions of a document have been segregated and disclosed." Pac. Fisheries, Inc. v. United States, 539 F.3d 1143, 1143 (9th Cir. 2008).

As Committee staff explained to Department staff in the January 14, 2012 call, it is impossible for us to evaluate the Department's concerns without a clear accounting of the documents being withheld. The deliberative process privilege is not an absolute bar against disclosure and cannot be used to shield alleged government wrongdoing. See In re Sealed Case, 121 F.3d 729, 737-38 (D.C. Cir. 1997). As we have detailed in this letter, we have very serious and legitimate concerns with the manner in which this rulemaking process is being handled. Even under the Department's faulty logic in support of the deliberative process privilege, it must examine each document and provide non-privileged portions. In contrast, the Department here is making a blanket claim of the privilege to withhold broad categories of information from Congress and appears to be refusing to provide even non-exempt documents or portions of documents or a detailed explanation of its search and withholdings. We are unclear as to why the Department has decided to produce some documents in their redacted form, while withholding other documents in their entirety – all with the claim of deliberative process privilege. In fact, the Department appears to also be withholding documents under this claim that it hasn't even bothered to review after collecting them nearly one year ago.

In a letter from the Department dated October 17, 2011, which was nearly ten months after our initial document request, it was stated that "in most cases, legitimate Congressional oversight interests can be satisfied by reviewing decisions . . . after they are made." While we appreciate the Department's willingness to comply with Congressional oversight once it has successfully codified its rushed rewrite of this federal regulation, we are not willing to wait until that time. To restate, this is an inquiry into the decision and actions to initiate the rewrite of this federal regulation, the manner in which the rewrite process is being managed or mismanaged, the cost of this undertaking, the termination of the contractor after disclosure of job loss information, and now the cooperation of personnel in complying with this legitimate exercise of Congressional oversight authority. We will not wait until the Department has cemented this rule into place and thousands of jobs are on the chopping block before getting answers to our

questions. We have waited nearly one year and the Department will not be able to use the excuse that it is in the middle of rewriting a federal regulation as a shield from providing requested information on that process and the decisions it has made. To be clear, it is within the purview of the Congress to determine what issues are germane to any given investigation, and what materials are responsive to a particular request. Furthermore, a number of our requests sought documents about decisions that have already been made, including the decisions to initiate this new rulemaking process, as described in the Advance Notice of Proposed Rulemaking published in the Federal Register on November 30, 2011, and the decision to terminate the contractor preparing the draft EIS.

IV. Noncompliance with the Administration's Stated Goal of Increased Transparency

The Department's failure to comply with these Congressional oversight requests is even more troubling considering the President's stated commitment to create "*an unprecedented level of openness in Government.*" See Memorandum for the Heads of Executive Departments and Agencies regarding Transparency and Open Government, Jan. 21, 2009. (Emphasis added.)

The President has advised agencies that "*[i]n the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.*" See Memorandum for the Heads of Executive Departments and Agencies regarding Freedom of Information Act, Jan. 21, 2009. (Emphasis added.) As part of the Department's efforts to implement the President's policy in favor of openness, you issued a memorandum on July 2, 2009 to all Department employees that, "*The Department will only withhold information when we reasonably can foresee that its release would harm an interest protected by a FOIA exemption (e.g., our national security or the privacy interests of individuals) or when disclosure is prohibited by statute. The President's and Attorney General's messages extend beyond the boundaries of the FOIA. They call upon agencies to aggressively increase proactive disclosures of information that is of interest to the public, thus vastly increasing information that is available on the internet. Our goal is to increase transparency.*" (Emphasis added.) When the Administration is rushing to rewrite a federal regulation that could cost thousands of American workers their jobs and careers during a time of economic hardship, the Department should be complying with rather than defying these pledges of transparency.

V. Final Opportunity for the Department to Comply

It is expected that the following items will be provided by the Department in the time requested. Each of the following documents is encompassed in the previous requests for documents made to the Department. This list does not include all of the outstanding items sought, and compliance with those requests is still expected. At this time, though, the following specific items are to be promptly provided. As stated at the outset of this letter, this serves as

notice of our intent to move to compel cooperation and production of these documents if this deadline is not met.

Documents and Items to be Produced

The following items are to be produced by the Department no later than February 2, 2012.

1. All recordings and all transcripts of recordings of meetings between OSM and contractors including recordings of any and all meetings related to the drafting and completion of the EIS and the RIA. This includes but is not limited to the 43 recordings containing 30 hours of recorded data in OSM's possession.
2. A complete, unredacted version of all items provided in redacted form, including those items listed in the Department index #00027094_Hastings_005_PRIV, received December 2, 2011, and Department index #00027094_Hastings_004_PRIV, received October 17, 2011.

The following items are to be produced by the Department no later than February 9, 2012.

3. All documents regarding the March 2010 settlement requiring OSM to make best efforts to sign a final action on the proposed rule no later than Friday, June 29, 2012; including drafts and any changes to the settlement with the litigants or ongoing discussions with the litigants about the Department's efforts to meet the terms of the settlement, and all documents related to attorney fees paid as a result of the settlement.
4. All documents including any drafts and briefing papers, related to the development of or analysis for the Advanced Notice of Proposed Rulemaking published on November 30, 2009.
5. All documents, including emails or memoranda, regarding the decision not to rely on the EIS for the 2008 rule, and to conduct a new EIS.
6. All documents, including emails or memoranda, within the Department and OSM, between the Department and OSM, between the Department and/or OSM, Office of Management and Budget, Council on Environmental Quality, Army Corps of Engineers, and White House Staff, and between OSM, the Department and any contractors or subcontractors (including but not limited to Polu Kai Services, ECSI, Morgan Worldwide, Plexus, and MACTEC) regarding the baseline parameters for the EIS and the RIA, specifically but not limited to documents regarding:
 - a. The baseline and parameters that were provided to the contractors prior to and including February 2011.
 - b. The baselines and parameters that were provided to the contractors after February 2011.

- c. The decision to expand the scoping opportunities for the re-write of the Rule.
- d. The decision to use the 2008 coal production numbers, the 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
- e. Whether the proposed rule would cover only surface mining or surface and underground mining.
- f. The implementation timeline of the Stream Protection Rule.
- g. Assumptions that the 2008 Rule was in effect and being enforced across the United States.

Including but not limited to communications to/from and between the following individuals:

- a. Ellen Athas
- b. John Craynon
- c. Andy Devito
- d. James Laity
- e. Brent Means
- f. Dennis Rice
- g. Emily Sharp
- h. Dianne Shawley
- i. Nancy Sloanhoffer
- j. Stephanie Varvell
- k. William Winters

- 7. A complete and detailed privilege log for all items responsive to any current or previous request from the Committee that the Department continues to withhold from the Committee, regardless of reason.

An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance. Please contact Machalagh Carr, Counsel, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production. Thank you for the Department's prompt attention to this matter.

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

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries,

affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. 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 of why full compliance is not possible.
8. 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 any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on

Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.

9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 13 2012

The Honorable Doc Hastings
Chairman,
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter transmits documents responsive to requests number 2 and 4 of the January 5, 2012, e-mail received from your staff.

Enclosed with this letter is one CD titled "00027094_Hastings_006" that contains 9 documents consisting of 76 pages of material responsive to those requests. None of these documents contain redactions.

As always, we remain committed to working with the Committee to accommodate the Committee's information needs.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Edward J. Markey
Ranking Member

The Honorable Doug Lamborn
Chairman, Subcommittee on
Energy and Mineral Resources

The Honorable Rush D. Holt
Ranking Member, Subcommittee on
Energy and Mineral Resources



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 02 2011

The Honorable Doc Hastings
Chairman,
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515


Dear Mr. Chairman:

This letter transmits additional documents responsive to request number 1 of your April 1, 2011, letter regarding concerns about the quality of a contractor's work and completion of an Environmental Impact Statement (EIS) to support the Office of Surface Mining Regulation and Enforcement's Stream Protection rulemaking effort.

Enclosed with this letter are two CDs. The first is titled "00027094_Hastings_005" that contains 31 documents consisting of 221 pages of material responsive to your request number 1. None of these documents contain redactions or otherwise confidential material.

The second CD is titled "00027094_Hastings_005_PRIV" and contains 147 documents totaling 1,136 pages. The documents on this disc are also responsive to your request number 1. These documents are watermarked as "Subject to FOIA Exemption 5" and contain internal, pre-decisional deliberative material with respect to which the Executive Branch has well-established confidentiality interests. The Department is producing these documents to the Committee, with some limited redactions, as discussed in previous transmittals with regard to similar material, in order to accommodate the Committee's legitimate oversight interests regarding the Department's concerns with the quality of the contractor's work. While we are providing these documents, we are not waiving any privileges that are attached to these documents in the FOIA or civil litigation context, and therefore, we respectfully request that you refrain from releasing the documents outside of Congress.

As always, we remain committed to working with the Committee to accommodate the Committee's information needs.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Edward J. Markey
Ranking Member

The Honorable Doug Lamborn
Chairman, Subcommittee on
Energy and Mineral Resources

The Honorable Rush D. Holt
Ranking Member, Subcommittee on
Energy and Mineral Resources



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 17 2011

The Honorable Doc Hastings
Chairman,
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter transmits additional documents responsive to requests numbered 1 and 3 of your April 1, 2011, letter regarding concerns about the quality of a contractor's work and completion of an Environmental Impact Statement (EIS) to support the Office of Surface Mining Regulation and Enforcement's Stream Protection rulemaking effort. This production is the second in a rolling production in response to item 1 of the April 1 letter and the sixth production related to the Stream Protection rulemaking that the Department has transmitted to you.

Enclosed with this letter are two CDs, the first titled "00027094_Hastings_004," contains four documents totaling 493 pages. These documents are responsive to your request numbered 1 and 3, and comprise consolidated comments on the draft SPR EIS and updated chart of recipients of the draft EIS.

The second CD, titled "00027094_Hastings_004_PRIV," contains copies of the Cure Notice and Response, and these documents contain both redactions and a watermark that reads "Subject to FOIA Exemption 5." These two documents address the Committee's concern about the manner in which the Department ended its relationship with a contractor, which is a completed action. However, in addition to indicating the Department's thinking regarding the quality of the contractor's work, this material also relates to the ongoing development of the EIS, for which preliminary draft chapters have previously been inadvertently disclosed to the public and subsequently produced to the Committee. Thus, these documents reflect internal, pre-decisional deliberations with respect to which the Executive Branch has well-established confidentiality interests. As discussed in more detail below, the Department is producing these documents to the Committee, with some limited redactions, in order to accommodate the Committee's legitimate oversight interests regarding the Department's concerns with the quality of the contractor's work.

Further, because of the unredacted deliberative material contained in these two documents, they have been stamped with a watermark to indicate that they are subject to Exemption 5 of the Freedom of Information Act (FOIA). While we are providing these documents with very limited

redactions to the Committee in light of its oversight functions, we are not waiving any privileges that are attached to these documents in the FOIA or civil litigation context, and therefore, we respectfully request that you refrain from releasing the documents outside of Congress.

As noted above, the Department has redacted limited material that reflects the Department's preliminary thinking on the scope or substance of the draft rule itself and the Regulatory Impact Analysis (RIA) being prepared to support the rule. Neither the draft rule nor the RIA has been completed, and neither document—unlike the inadvertently-released preliminary draft chapters of the EIS—has been publicly disclosed. The Committee's September 28 letter regarding the Stream Protection rulemaking noted that the Department is making this distinction between discussion of the preliminary draft EIS chapters, on the one hand, and the draft rule and RIA, on the other. We want to take this opportunity to more fully describe our need to protect the independence, integrity, and confidentiality of our ongoing rulemaking proceeding.

It is the longstanding policy of the Executive Branch to seek to accommodate Congressional oversight requests to the fullest extent possible consistent with the constitutional and statutory responsibilities of the Executive Branch. Much of the material the Committee has requested reveals internal, deliberative, pre-decisional communications concerning OSM's ongoing development of a rulemaking proposal. The Committee's inquiry into this ongoing decision-making process goes to the heart of the relationship between the Legislative and Executive Branches and the separation of powers rooted in the Constitution.

The Executive Branch's well-established confidentiality interests regarding its internal deliberations are heightened when requests for such deliberative communications are made before the Executive Branch has made a decision regarding the pending issue. Not only would disclosure in these circumstances reveal the Executive Branch's preliminary, non-final thinking on the pending matter, but it also raises separation of powers concerns about intrusion into the Executive Branch function of executing the law.

In most cases, legitimate Congressional oversight interests can be satisfied by reviewing decisions (including the analysis and rationale articulated to support the decision) after they are made. The Department is seeking to accommodate the Committee's oversight interests in the Department's handling of the EIS contractor in a manner that is consistent with our separation of powers and confidentiality concerns through the approach to these documents articulated above.

Finally, the disk we are providing today contains several sets of consolidated departmental and cooperating state comments on the contractor's preliminary draft chapters of the EIS. These documents, along with the Cure Notice and Response, are responsive to request item 1 of your April 1 letter. Also included on the disk is an updated chart of those individuals who received all or part of the preliminary draft EIS based on additional information received by the OSM. An earlier version of this chart, responsive to request number 3 in your April 1 letter, was provided to you under the cover of our June 17 transmittal. The OSM believes this chart is now complete.

As always, we remain committed to working with the Committee to accommodate the Committee's information needs in a manner that respects the Department's constitutional interests in executing the laws as well as its limited resources.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Salotti". The signature is fluid and cursive, with the first name "C." and the last name "Salotti" clearly visible.

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Doug Lamborn
Chairman, Subcommittee on
Energy and Mineral Resources

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

October 13, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DeFAZIO, OR
ENI F.H. FALOMAVAEGA, 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:

On September 28, 2011, the Committee once again wrote you to request that the Department of the Interior (DOI) provide documents and information related to DOI's Office of Surface Mining, Reclamation and Enforcement's (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). The Committee requested that documents related to OSM's concerns, discussions, comments or questions about the quality of Polu Kai's work be produced and documents related to the RIA be made available to Committee staff for review by October 5, 2011. On October 11th, Committee staff received an email from a DOI official noting that DOI had missed this latest deadline and hoped to produce a response soon.

As you are aware, the Committee began its investigation of the rewrite of the Rule in February 2011. Although some documents have been produced, taken as a whole, DOI's response can best be characterized as an exercise in deliberate delay and noncompliance. Couched with claims of limited resources and privilege concerns, DOI continually professes the desire to be responsive to the Committee's requests, but then does not produce the requested information and often does not provide any written response until after the deadline imposed by the Committee has passed. We are frustrated by these tactics and pattern of delay, and non-response to official Congressional oversight of DOI. Over eight months have passed, and the Committee has not received any documents relating to OSM's assessment of the quality of Polu Kai's work despite suggestions raised in the press that OSM disapproved of the contractor's performance. On numerous occasions, the Committee has requested that DOI produce the requested documents and information, and the Committee continues to wait for DOI to fully comply with all requests.

Consequently, this letter serves as a final request for complete compliance with the requests for documents and information under the terms contained in the Committee's letters

dated information and documents by letters dated February 8, 2011; February 10, 2011; April 1, 2011; July 18, 2011; August 15, 2011; and September 28, 2011. DOI's response is due no later than October 17, 2011. If DOI fails to once again meet the Committee's deadline, we will consider exercising the Committee's authority to compel compliance with the requests through the issuance of subpoenas.

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

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
RAUL C. BROWN, GA
JOHN FLEMING, LA
MIKE COFFMAN, CO
TOM MCCLINTOCK, CA
GLENN THOMPSON, PA
JEFF DENHAM, CA
DAN BENISHKE, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, CO
PAUL A. GOSAR, AZ
RAUL 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

September 28, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DEFAZIO, OR
EMILY F. FALOMAVAEGA, AS
FRANK PALLONE, JR., NJ
GRACE F. NAPOLITANO, CA
RUSH D. HOLT, NJ
RAUL M. GRIJALVA, AZ
MADELINE Z. BORDALLO, GU
JIM COSTA, CA
DAN BOREN, OK
GREGORIO KILILI CAMACHO SABLAN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJAN, NM
JOHN P. SARABANES, MD
BETTY GUTTON, OH
NIKI TSONGAS, MA
PEDRO IL 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:

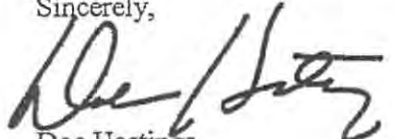
As you know, the Committee is conducting an investigation into DOI's Office of Surface Mining, Reclamation and Enforcement's (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). The Committee has made requests for information and documents by letters dated February 8, 2011; February 10, 2011; April 1, 2011; July 18, 2011; and August 15, 2011.

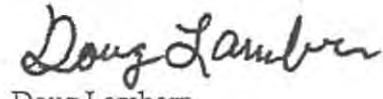
On August 19, 2011, Committee staff met with DOI staff regarding another ongoing investigation being undertaken by the Committee. During this meeting, DOI staff represented that documents relating to concerns, discussions, comments or questions regarding the quality of Polu Kai's work performed in connection with the revision of the Rule would be provided to the Committee the following week. This information had been requested by the Committee in its April 1st letter. DOI staff also informed Committee staff that because of perceived privilege concerns, DOI would be inviting Committee staff to come to DOI to review documents responsive to the Committee's other requests relating to the rewrite of the Rule. Additionally, DOI staff informed Committee staff that DOI was making a distinction between information relating to the RIA and the EIS because the RIA was not yet public and the EIS had been made public. Because of this distinction, DOI viewed the RIA and the scope of the Rule as part of ongoing rule making and related information and documents did not have to be provided to the Committee. Consequently, DOI would not be providing any information and documents responsive to Request 2 as set-forth in the Committee's April 1st letter. At this time, the Committee reserves comment on DOI's position.

On September 2, 2011, after the Committee did not receive any documents from DOI, Committee staff contacted Christopher Mansour to inquire about the status of the production. Mr. Mansour indicated that DOI planned to provide the information discussed at the August 19th meeting in early September.

Given the passage of time since the original request for this information was made, the Committee requests that any and all information relating to the quality of Polu Kai's work in connections with OSM's rewrite of the Rule be provided to the Committee no later than October 5, 2011. The Committee also requests that by October 5th, DOI staff make any documents relating to the Rule that DOI has privilege concerns available for Committee staff review. We look forward to DOI fulfilling its obligation to be responsive to the Committee's requests.

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

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

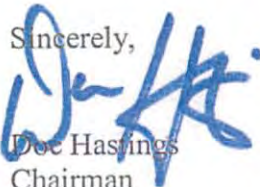
offices. Nor has DOI followed these procedures in response to Request 2 as contained in the Committee's letter of April 1st that requested documents and communications relating to the economic impact or potential job loss estimates or figures from October 1, 2010 to the present. Instead, DOI has continually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



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

AUG - 9 2011

The Honorable Doc Hastings
Chairman,
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter transmits the first production of documents in a rolling production related to item 1 of your April 1, 2011 letter regarding the Office of Surface Mining's ongoing stream protection rulemaking. It follows letters from the Department dated March 1, April 6, May 13, June 17, and August 1.

Item 1 of your April 1 letter requests documents and communications relating to the Department's concerns about the quality of the work done by a contractor developing an Environmental Impact Statement to support the rulemaking. As indicated in the Department's letters dated June 17 and August 1, the Department considers item 1 of the April 1 letter to be the only open request for documents from the Committee regarding the stream protection rulemaking. We anticipate additional productions to the Committee of documents related to item 1 throughout the next month. In addition, because the contractor has waived its privilege on its Technical Proposal, the Department is providing a non-watermarked version to replace the one previously provided to the Committee.

Enclosed with this letter are two CDs, with accompanying indices.

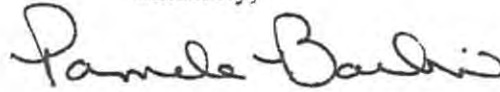
The first CD, titled "00027094_Hastings_003" contains 37 documents and 239 pages responsive to item 1 of the April 1 request.

The second CD, titled "00027094_Hastings_001_CONF_RMVD" contains the un-watermarked Technical Proposal which is 97 pages.

As previously stated, the Department understands and respects your interest in this important topic and, as always, the Director is ready to brief you on actions being undertaken by Office of Surface Mining as it moves forward with its rulemaking effort.

Please do not hesitate to contact me at (202) 208-1403 if you have any questions.

Sincerely,

Handwritten signature of Pamela Barbis in cursive script.

for

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 01 2011

The Honorable Doc Hastings, Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Hastings:

The Department of the Interior is in receipt of your three letters, dated July 18, 2011, that relate to the status of several of the requests for documents and information that you have made to the Department and its bureaus during the 112th Congress.

Specifically, these letters address requests for documents and information that relate to --

- all lawsuits currently filed or pending against the Department of the Interior and its bureaus, agencies, and offices;
- the Office of Surface Mining, Regulation and Enforcement's ongoing Stream Protection rulemaking; and
- the Report of Investigation on the Federal Moratorium on Deepwater Drilling issued by the Department's Office of Inspector General.

As an initial matter, I want to be clear that the Department recognizes the legitimate and important oversight responsibility of the Natural Resources Committee, and we are committed to working with the Committee and its staff to provide material responsive to the Committee's information needs while respecting important Executive Branch confidentiality interests and recognizing the limited resources of the Department. In our efforts to respond to your letters, the Department has already responded with five letters that included substantial information responsive to the Committee's requests and over 10,500 pages of documents all of which required extensive staff time and resources. These responses, in the view of the Department, and as indicated in our letters, closed out many of the requests you have reiterated in your letters of July 18, 2011. Moreover, the Department continues to expend significant resources and staff time to collect, review and process documents for production to the Committee regarding your remaining requests.

Following a conversation with your Committee staff on Friday, July 29, 2011, we now understand that two of the Department's letters and accompanying documents delivered to the Committee in April and June, respectively, were apparently misrouted after delivery and never received by the appropriate staff. We have since redelivered the letters and documents.

We also remain committed to working with you and your staff to address any specific remaining needs of the Committee regarding responses that have been completed.

A detailed response addressing the substance of each of these letters is provided below.

Request for Information Related to Lawsuits

One of your July 18 letters relates to your May 4, 2011 request for information related to all lawsuits currently filed or pending against the Department and its bureaus, agencies, and offices, and delineates additional information relating to each case that you requested.

Along with staff from the Department's Office of the Solicitor, I discussed this request with Committee staff on May 19 and June 7. In both conversations, we indicated that the Department of the Interior does not have a centralized tracking system to enable us to readily provide information you requested and that we would coordinate with staff at the Department of Justice (DOJ) to most expeditiously obtain information from their litigation tracking systems. As you note in your letter, that information – provided by DOJ's Civil and Environment and Natural Resources Divisions and the Executive Office of United States Attorneys – was provided to you on June 20. The information provided was in the form of three indexes, comprising more than 240 pages.

Your July 18 letter indicates that "in subsequent conversations DOJ and Committee staff agreed that DOJ could first provide the Committee with a list of lawsuits which provided a majority of the requested information and then supplement this response with a list of the statutes implicated in each of the lawsuits." This is not our recollection of the conversations. We noted in those discussions that not all of the lists provided by the DOJ contained all of the information requested – in particular, identification of the statutes implicated in each of the lawsuits. Committee staff encouraged the Department to send what was available and indicated they would determine later whether any additional information was necessary. The Department did not commit to providing any further information and, in fact, has no other comprehensive source of such information available. As we noted in our June 20 letter, that letter and the enclosed DOJ tracking lists constituted our complete response to the Committee's May 4 request.

In a third conversation with your Committee staff on July 29 we explained that devoting staff time and departmental resources to searching publically available court dockets to determine the statutes at issue for each of the many hundreds of cases would be extremely burdensome for the Department. Committee staff agreed that this kind of search was not necessary at this time. We agreed to your staff's request that as a next step, the Department will again contact DOJ to

confirm that there is no readily available source for the information you've requested and to determine whether there are any alternative sources of information, such as statistics kept, that would fulfill the Committee's information needs. We will report to the Committee as soon as we have further definitive information from DOJ.

Request for Information Related to Stream Protection Rule

Another July 18 letter addressed responses to your requests to the Office of Surface Mining, Regulation and Enforcement and the Department regarding OSM's ongoing Stream Protection rulemaking, and seeks certain information requested in your February 10, 2011, letter to OSM and April 1, 2011, letter to the Department.

Your letter expresses your concern that in producing "some limited information and documents" and in making "representations to Committee staff about forthcoming productions and documents," the Department "has largely failed to provide a written response to a number of requests." In responding, let me first summarize our responses delivered to the Committee so far, two of which we now understand from Committee staff were apparently misrouted after delivery and never received by the appropriate staff:

- On June 17, the Department responded in writing to the February 10, 2011 letter, providing documents in response to items numbers 2 and 3 and explaining that item 1, in which the Committee seeks information on meetings and correspondence between the Director's office and other federal agencies and offices, implicates important Executive Branch confidentiality interests concerning deliberations on ongoing rulemaking proceedings, which constrain the Department's ability to respond.
- In letters dated May 13 and June 17, the Department responded in writing regarding three items of the four items listed in your April 1, 2011 letter and providing documents and information and explaining that item 2 implicated important Executive Branch confidentiality interests and that documents responsive to the remaining item (item 1) would be forthcoming.
- In letters dated March 1, April 6, and May 13, the Department provided written responses to the Committee's February 8 letter regarding the same rulemaking and provided the Committee both information and documents:
- OSM Director Joe Pizarchik has repeatedly offered to again make himself personally available to discuss where OSM was in the rulemaking process and the basis for the actions under consideration at the time, as well as to update you as OSM moves forward in the process (March 1, 2011, response; May 13, 2011, response; June 17, 2011, response). To our knowledge, the Committee has not taken the Director up on his offers.

In summary, the Department has worked diligently to accommodate the Committee's oversight interest in the Stream Protection rulemaking and related matters and responded in letters dated March 1, 2011; April 6, 2011; May 13, 2011; and June 17, 2011 with information and over 10,000 pages of documents. We continue to collect, review and process and will soon be in a position to share additional documents responsive to the April 1, 2011 letter. In a July 29 phone conversation with Committee staff, the Department learned that the letters and accompanying information delivered to the Committee on June 17 and April 6 did not reach appropriate staff for review. Those letters and documents have been redelivered to the Committee.

In our July 29 conversation, Committee staff agreed that they would review those responses before determining what, if any, specific additional information needs exist regarding the February 10 letter and items 2 through 4 from the April 1 letter. The Department committed to begin production of documents responding to item 1 of the April 1 letter by August 5 and stated our hope to complete that production within one month.

In addition to providing further documents in response to this one item in the April 1 letter, we remain ready and committed to working with the Committee to accommodate any specific concerns articulated by the Committee regarding responses already provided in a manner that satisfies those concerns while respecting the Executive Branch's confidentiality interests and the Department's limited resources.

Request for Information Related to Inspector General Report

Finally, your third letter addresses your request for documents underlying the Report of Investigation on the Federal Moratorium on Deepwater Drilling issued by the Department's Office of Inspector General (OIG) in November 2010. In that report, the OIG found no intent to mislead the public after a thorough investigation of the edits to the Executive Summary of the 30-Day Report to the President. Furthermore, the IG found that the Department had adequately remedied any concerns by communicating directly with the experts, offering a formal apology, and publicly clarifying the nature of the peer review of the 30-Day Report.

As we have explained in conversations with Committee staff, the documents and information requested in item (c) of your April 25 letter relate directly to the OIG's conduct of its investigation and are in the possession of the OIG. Through discussions between the Office of the Solicitor and staff in the OIG, we understand that some of the documents requested in your letter have been provided to you by OIG staff. With this letter, we are providing on a disk those documents relating to the OIG investigation that are in our possession and which do not implicate important Executive Branch confidentiality interests: the unredacted OIG report and eleven attachments.

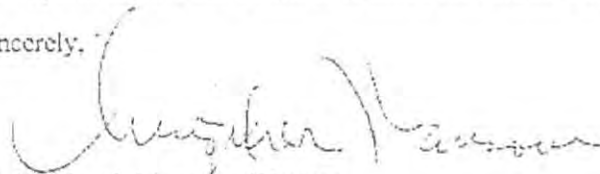
Regarding the remaining items in that letter, we have had several conversations with your staff seeking to fully understand the Committee's specific oversight interests in the hopes that we might better focus our search and accommodate the Committee's interests while still honoring

important confidentiality interests that serve to facilitate Executive Branch deliberations and respecting the limits of the Department's resources. Your staff have clarified that the request in item (e) regarding the "moratorium" references 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." However, additional clarity regarding your information needs in this area as well as for the request as a whole would help expedite our Department's response to your request and provide you with the information your Committee needs to fulfill its oversight function.

To help facilitate that process and provide an initial response to the Committee, in our July 29 conversation, the Department invited Committee staff to the Department to review one attachment to the OIG report that the OIG withheld from the Committee because it implicates important Executive Branch confidentiality interests. We continue to believe that the attachment, an OIG Investigative Activity Report ("IAR"), raises important confidentiality interests of the Executive Branch, as it describes in detail confidential, deliberative communications between senior officials in the White House and the Department. However, as an accommodation, we are prepared to share this OIG document with the Committee at this time in order to meet the Committee's information needs. Your staff agreed that this offer was a good step toward meeting the information needs of the Committee and that review has been scheduled for tomorrow, August 2. At the request of your staff, the Department agreed to provide an index of the remaining withheld attachments to the IG report. That index will be provided to your staff on August 2 when they arrive at the Department to review the IAR. Further, your staff committed that if the Committee has 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.

We remain open to further discussion of this matter, as well as the status of the ongoing processing of these documents and any additional means of accommodation with your staff. We are hopeful that we can continue to move forward in a mutually respectful relationship.

Sincerely,



Christopher J. Mansour, Director
Office of Congressional and Legislative Affairs
U.S. Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 29 2011

The Honorable Doc Hastings
Chairman,
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

At the request of your staff, we are retransmitting to you a set of documents responsive to your letter of February 10, 2011, to the Office of Surface Mining, Reclamation and Enforcement, and to questions 3 and 4 of your April 1, 2011, letter to Secretary Salazar seeking documents in information related to OSM's revision of the Stream Protection Rule.

As indicated on the enclosed Hand Carry sheet, these documents were originally transmitted to your office, via courier, on June 17, 2011, and receipt of the documents was acknowledged with the signature of a member of your staff.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-1403.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosures

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 BENISHK, MI
DAVID RIVERA, FL
JEFF DUNCAN, SC
SCOTT R. TIPTON, 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

July 18, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DEFazio, OR
ENI F.H. FALOMAVAEGA, 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 LUJAN, 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
1849 C Street, NW
Washington, DC 20240-0001

Dear Mr. Secretary:

As you are aware, the Committee on Natural Resources (Committee) is actively investigating issues surrounding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). Through series of letters to the OSM and the Department of the Interior (DOI), the Committee has requested information and documents relating to the revision of the Rule and the economic impact of the Rule. Under the Rules of the House of Representatives, the Committee has general and continuing oversight and investigative authority over the subject matter of the activities, policies, and programs of DOI. DOI has the responsibility and obligation to be responsive to requests for information from this Committee so it can fulfill its Constitutional oversight duties. While some limited information and documents have been produced and DOI has made representations to Committee staff about forthcoming productions of documents, DOI has largely failed to provide a written response to a number of requests. This failure to comply is all the more troubling as DOI continues to aggressively pursue a rewrite of this regulation.

Specifically, DOI has failed to provide the Committee a written response for the following items as requested by letter dated February 10, 2011, to OSM:

Please provide copies of information on meetings and all correspondence including emails, letters, faxes, and phone logs between your office, and the following federal agencies and offices, states and non-governmental organizations:

1. Federal Agencies and Offices:

- Ms. Carol Browner, White House Office of Energy and Climate Change Policy
- Ms. Lisa Jackson, Administrator of the Environmental Protection Agency (EPA)
Mr. Peter Silva, Assistant Administrator Office of Water - EPA
Mr. Bob Sussman, Deputy Administrator - EPA
Mr. Greg Peck, Chief of Staff, Office of Water - EPA

- Ms. Nancy Sutley, Chair of the Council on Environmental Quality (CEQ)
Mr. Michael Boot, Associate Director for Land and Water Ecosystems - CEQ
Mr. Amelia Salzman, Associate Director for Policy Outreach – CEQ
- Mr. Ken Salazar, Secretary of the Interior
Mr. David J. Hayes, Deputy Secretary
Mr. Steve Black, Counselor to the Secretary
Ms. Hilary Tompkins, Solicitor of the Interior
Ms. Rhea Suh, Assistant Secretary, Policy Management and Budget
Mr. Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks
Ms. Wilma Lewis, Assistant Secretary, Land and Minerals Management
Ms. Anne Castle, Assistant Secretary, Water and Science
Mr. Larry Echo Hawk, Assistant Secretary, Indian Affairs
Mr. Jonathan Jarvis, Director, National Park Service (NPS) and/or other NPS employees
Mr. Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service (FWS) and/or other FWS employees
Ms. Marcia McNutt, Director, U.S. Geological Survey and/or other USGS employees
Mr. Mike Connor, Commissioner, Bureau of Reclamation
Mr. Bob Abbey, Director, Bureau of Land Management (BLM) and/or other BLM employees
- Ms. Jo Ellen Darcy, Army, U.S. Assistant Secretary of the Army (Civil Works)
Ms. Meg Smith, Chief, Regulatory Program, Army Corps of Engineers

2. States:

- Alabama
- Indiana
- Kentucky
- New Mexico
- Utah
- Texas
- Virginia
- West Virginia
- Wyoming

3. Non-governmental Organizations:

- Appalachian Citizens Law Center
- Appalachian Voices
- Earthworks
- Keeper of the Mountains
- Kentuckians for the Commonwealth
- National Parks Conservation Association
- Northern Plains Resource Council
- Ohio Valley Environmental Coalition

- Save Our Cumberland Mountains
- Sierra Club
- Southern Appalachian Mountain Stewards
- Southern Utah Wilderness Alliance
- Waterkeeper Alliance
- West Virginia Highlands Conservancy
- WildEarth Guardians

A complete written response was to be provided to the Committee no later than March 18, 2011.

Further, DOI has failed to provide the Committee a written response for the following items as requested by letter dated April 1, 2011, to DOI.


1. Any and all documents and communication relating to concerns, discussions, comments, or questions regarding the quality of the Contractor's or any of its sub-contractor's work from May 1, 2010 to the present;
3. A list of all individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and
4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

A complete written response was to be provided no later than April 15, 2011.

Given DOI's failure to meet these previous deadlines, we request that a complete written response be provided to the Committee no later than August 1, 2011. 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. 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. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the deadlines set out in the original requests, shall be produced immediately upon location or discovery subsequent thereto. Please be advised, under the Rules of the House of Representatives, the Committee can compel the production of documents.

If you have any questions about this matter or to make arrangements for production, please do not hesitate to contact Traci Rodriguez, Senior Counsel, Office of Oversight and Investigations, or Tim Charters, Staff Director of the Subcommittee on Energy and Mineral Resources. We look forward to your timely response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings".

Doc Hastings
Chairman
Natural Resources Committee

A handwritten signature in blue ink, appearing to read "Doug Lamborn".

Doug Lamborn
Subcommittee Chairman
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 17 2011

The Honorable Doc Hastings
Chairman,
Natural Resources Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter transmits the final set of documents responsive to your letter of February 10, 2011, to the Office of Surface Mining, Reclamation and Enforcement's Director Joseph G. Pizarchik, and to questions 3 and 4 of your letter of April 1, 2011, to Secretary Salazar seeking documents and information related to OSM's revision of the Stream Protection Rule. This response follows previous letters sent to you by Director Pizarchik on March 1, April 6, and May 13, 2011. With this response and the three previous responses, the Department has answered your requests made in the February 8 and February 10, 2011, letters and in questions 2, 3 and 4 of the April 1, 2011, letter. The Department continues to process documents and information in response to question 1 from the April 1 letter and will begin production of documents as soon as possible.

Enclosed are two CDs, with accompanying indices, containing responsive material.

The first CD, titled "00025866_Hastings_001," contains documents responsive to requests in your February 10, 2011, letter to Director Pizarchik for information on meetings and correspondence between the Director's office and states and non-governmental organizations:

This CD contains 17 documents consisting of 69 pages. None of the documents have been redacted.

The second CD, titled "00027094_Hastings_001," contains documents responsive to requests numbered 3 and 4 in your April 1, 2011, letter to Secretary Salazar:

3. A list of individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and

4. Copies of agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

This CD contains 18 documents consisting of 169 pages. None of the documents have been redacted.

With regard to the February 10, 2011, letter, as the Department has stated in previous written and staff level communications, your requests into an ongoing rulemaking process implicate important confidentiality interests for facilitating internal agency deliberations and constrain the Department's ability to provide answers to several of the requests for analysis and documents. These constraints apply to the request made in your February 10, 2011, letter for information on meetings and correspondence between the Director's office and other federal agencies and offices. However, the Department understands and respects your interest in this important topic and as always the Director is ready to brief you on actions being undertaken by OSM as it moves forward with its rulemaking effort.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-1403.

Sincerely,



Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosures



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, D.C. 20510

MAY 13 2011

Dear Mr. Chairman:

This letter transmits additional information and documents in response to your request of February 8, 2011, concerning stream protection regulations and the supporting Draft Environmental Impact Statement (DEIS) under development by the Office of Surface Mining Reclamation and Enforcement (OSM). This serves to supplement information I provided to you on March 1, 2011, and April 6, 2011.

Interior Secretary Ken Salazar has asked that I also respond to your and Subcommittee Chairman Lamborn's April 1, 2011, letter to him which requests information specific to communications between the Department and Polu Kai Services, LLC.

Enclosed are three discs containing documents responsive to your requests.

The CD labeled "00025637_Hastings_002" dated May 10, 2011, contains electronic copies of documents provided by OSM that are responsive to request number 4 in your letter of February 8, 2011:

Please provide me the analysis OSM has conducted on the specific impacts of the present rulemaking effort with regards to:

4. Environmental analysis and supporting scientific documentation.

These documents provide supporting scientific materials related to the environmental analysis for the Preliminary DEIS.

The CD labeled "00025637_Hastings_002" dated May 10, 2011, as well as the CD titled "00027094_Hastings_001_CONF" dated May 10, 2011, contain electronic copies of documents that are responsive to request number 6 in your February 8, 2011, letter:

6. What experience or credentials do the contractor and any subcontractor, possess with respect to coal mine planning and operations and coal markets?

The CD labeled "00025637_Hastings_002" dated May 10, 2011, contains a spreadsheet provided by the contractor indicating the names and credentials of those who prepared the early working

chapters of the Preliminary Draft EIS that were submitted to the OSM. The CD titled 00027094_Hastings_001_CONF" dated May 10, 2011, contains the Technical Proposal submitted by the OSM contractor, Polu Kai Services, LLC. This Technical Proposal contains, among other things, the experience and credentials of the personnel that constituted Polu Kai's proposed team. Please note that we are consulting under the Department's Freedom of Information Act regulations with Polu Kai regarding potentially confidential commercial information in the Technical Proposal, and have therefore watermarked the document we are sending you as "Confidential." We request your assistance in ensuring that the contents of this document remain protected and are not released to the public.

The CD labeled "00025637_Hastings_002" dated May 10, 2011, also contains electronic copies of documents that are responsive to request number 7 in your February 8, 2011, letter:

7. Would you provide the names and affiliation of the members of the DEIS Mining Analysis team and the Subject Matter Experts used in the informal elicitation process?

The CD includes a list provided to the OSM by the contractor identifying the contractor and/or subcontractor personnel that participated in the contractor's DEIS Mining Analysis team, as well as the contractor and/or subcontractor subject matter experts used in the contractor's informal elicitation process.

The CD labeled "00027094_Hastings_001" dated May 10, 2011, contains electronic copies of documents provided by the OSM that are responsive to request number 4 in your letter of April 1, 2011:

4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such order or agreements.

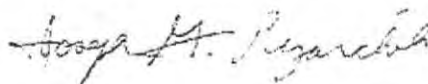
Included on the CD is a copy of the original contract between the OSM and Polu Kai Services, LLC, as well as the final modification (modification no. 5) dated March 24, 2011, that ended the contract between the OSM and Polu Kai Services, LLC. This mutually agreed-upon modification was in the best interest of both parties. The modification contains mutual non-disparagement language.

The OSM and the Department are continuing the process of indentifying documents which may be responsive to your requests in an effort to respect the Congressional oversight process while protecting the agency's deliberative rulemaking process.

Again, I thank you for your interest in the OSM's development of the Stream Protection Rule. I remain available to meet with you to discuss actions being undertaken by the OSM as it moves forward with its rulemaking effort, should that be of interest to you.

If you have any questions or need additional assistance, please do not hesitate to contact me at (202) 208-4006 or Dirk Fillpot on my staff at (202) 208-2838. I look forward to the opportunity to be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph G. Pizarchik".

Joseph G. Pizarchik
Director

Enclosures

cc: Subcommittee Chairman Doug Lamborn



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



The Honorable Doc Hastings
Chairman
House Committee on Natural Resources
Washington, DC 20515

April 6, 2011

Dear Mr. Chairman:

Thank you for your recent letters in which you request a number of documents relating to stream protection regulations under development by the Office of Surface Mining Reclamation and Enforcement (OSM). This provides information to you in addition to that provided in my response of March 1, 2011.

Enclosed is a CD entitled 00025637-Hastings_001, dated April 6, 2011, that contains information provided by the OSM relevant to your request number 4 in your letter of February 8, 2011:

4. Environmental analysis and supporting scientific documentation.

The disc contains a list of documents, including website links, as appropriate, identified by OSM's contractor as materials the contractor reviewed in developing preliminary working chapters of the Draft EIS. Given the volume of documents in this list, OSM will be happy to provide to you promptly, upon request, hard copies of any documents you wish to receive that are not already available through a live internet link in the attached disc.

The OSM is continuing to search for information relevant to your remaining requests. We believe it is important to provide you with information as soon as it becomes available rather than waiting until all relevant searches have been completed. Therefore, we will supplement this response as determinations are finalized or additional documents are identified.

If you have any questions or need additional assistance, please do not hesitate to contact me or Dirk Fillpot, on my staff, at (202) 208-4006.

Sincerely,

Joseph G. Pizarchik
Director

TAKE PRIDE
IN AMERICA 

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. TIPTON, 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

April 1, 2011

EDWARD J. MARKEY, MA
RANKING DEMOCRATIC MEMBER
DALE E. KILDEE, MI
PETER A. DeFAZIO, OR
ENI F.H. FALLOMAVAEGA, 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 SABLÁN, CNMI
MARTIN HEINRICH, NM
BEN RAY LUJÁN, NM
DONNA M. CHRISTENSEN, VI
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 Secretary Salazar:

The Committee on Natural Resources (Committee) is actively investigating issues surrounding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). Through this letter, we request information and cooperation regarding communication between the Department of the Interior (DOI) and Polu Kai Services LLC (Contractor) and any of its subcontractors. Your response on behalf of DOI is important for the Committee to carry out its oversight and legislative responsibilities and to ensure that the rewrite of the Rule is consistent with state and federal laws.

Based on recent statements made by DOI officials, it appears as though the DOI purportedly expressed concerns about the quality of the Contractor's work, and information is sought to determine whether such concerns were expressed before, or only after, job loss impact information became publicly known through media reports. We also understand that as part of the Contractor's scope of work, the Contractor analyzed several different economic impact scenarios including the effect on coal mining and job loss at risk from the proposed Rule.

We request the following items:

1. Any and all documents and communication relating to concerns, discussions, comments, or questions regarding the quality of the Contractor's or any of its sub-contractor's work from May 1, 2010 to the present;
2. Any and all documents and communication relating to the economic impact or potential job loss estimates or figures from October 1, 2010 to the present;
3. A list of all individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and
4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

The Honorable Ken Salazar
April 1, 2011
Page 2 of 2

The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.

The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, maps, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.

We expect a complete written response to be provided to the Committee no later than April 15, 2011.

The staff contact on this matter is Tim Charters, Staff Director, Subcommittee on Energy and Mineral Resources. Any communication must be made in writing via email to Tim.Charters@mail.house.gov or fax, at (202) 225-5255, or letter to:


Chairman Doc Hastings
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth HOB
Washington, D.C. 20515

ATTN: Tim Charters

Thank you in advance for your cooperation with the Committee in its review of this matter.

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



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



MAR - 1 2011

The Honorable Doc Hastings
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letters dated February 8, 2011, and February 10, 2011, both of which concern rule revisions that the Office of Surface Mining Reclamation and Enforcement (OSM) is undertaking on the Stream Protection Rule. I appreciate your interest, and the opportunity to respond to your concerns.

In both letters, you request a number of specific documents. The OSM is working to process your request for documents and information and will respond to you as soon as possible.

You also raise, however, a number of questions related to OSM's current rulemaking efforts. First, I assure you that there is no new Stream Protection Rule yet in place. At this stage, OSM has not completed a draft of the proposed rule. When it has completed the proposed rule, OSM will publish it for public comment before finalizing the rule. Likewise, OSM has not yet completed a draft of the Environmental Impact Statement (EIS) related to the rule changes. Once complete, the Draft EIS, too, will be available for public comment.

You ask why OSM is working to replace the Stream Buffer Zone Rule adopted in 2008. On December 12, 2008 (73 FR 75814-75885), OSM published a final Stream Buffer Zone Rule. This rule was challenged in District Court, and the Department of the Interior entered into a settlement agreement staying that litigation. That settlement agreement also established timeframes for development of revised regulations. While working to meet those timeframes, OSM has sought to conduct its regulatory process in an open and transparent manner, and to provide the public and interested states with the opportunity for early involvement. In November of 2009, OSM issued an advance notice of proposed rulemaking (74 FR 62664). Although not required by law, this step was undertaken to solicit early public opinion on issues that ought to be addressed in the regulation. The advance notice, which generated over 32,000 public comments, sought public input on ten options for revising the 2008 rule. Moreover, OSM conducted 15 stakeholder outreach sessions with a broad cross-section of stakeholders, including state and tribal regulatory authorities, industry, environmentalists, and the United Mine Workers of America, to obtain further input. This process, which was not part of the 2008 rulemaking, continued our practice of soliciting full public input and participation on the various options the bureau should consider and address.

In April of last year, OSM sought initial public input for the development of a Draft EIS. This process included nine public scoping meetings on options to be considered in the EIS. In June 2010, OSM shared with the states and the public information regarding possible alternatives that could be considered for the rule.

At this point in developing the Draft EIS, OSM is still in the information-gathering phase. The OSM is reviewing a preliminary, partial draft prepared by a contractor, as well as considering comments it has received from cooperating states. OSM shared the early, contractor-generated draft chapters of the Draft EIS with the cooperating states in a continuation of its effort to be more open and transparent in its rulemaking process. As you reference in your letter, these contractor drafts were recently made public. Per your request, attached please find the copies of the contractor's first draft of Chapters 1 through 4 of the Draft EIS that prematurely were made public last month. These draft documents are not official OSM documents and do not reflect either the official views of OSM or of the Department of the Interior.

The final Draft EIS will be based on reliable, accurate information, and OSM anticipates publishing the draft later this year. The published Draft EIS will contain a set of alternatives that will have been formally reviewed through a full EIS process, with public input and engagement.

Your letter of February 8, 2011, also asks a number of specific questions regarding the effect of the proposed rule. Because OSM is still in the process of determining the content of the proposed rule, as well as developing the information necessary to assist in the bureau's decision making, it is premature to address specific questions you pose in your February 8 letter, such as the effect of the rule on underground longwall mining. I very much appreciate the concerns you raise regarding potential impacts on jobs, workers and communities. Because the information upon which a proposed rule will be based is still being developed, OSM is not yet at a stage to be able to provide accurate estimates on job impacts. The numbers contained in the published contractor drafts are not accurate.

Please be assured that as OSM moves forward, OSM will be seeking to create jobs, to provide for the coal supply essential to the Nation's energy requirements, and to protect the streams and other environmental assets so critical to the health and economic well-being of communities. The OSM will also ensure that any final rule will comply with all applicable law, including Executive Orders. Regarding your question about the process for selecting the contractor for preparing the Draft EIS, OSM followed the competition requirements under Section 8(a) of the Small Business Act, 15 U.S.C. 637(a), as provided for in Section 6.204(a) of the Federal Acquisition Regulation.

Regarding the cost to OSM of preparing the 2008 Stream Buffer Zone Rule, the 2008 rule was developed over a period of approximately four years using staff and contractor resources at various times during those years. The process used by OSM during that time did not track the costs for that rule separately from other rulemaking activities being undertaken by OSM during that same period. Therefore, OSM is unable to determine the separate cost for developing the 2008 Stream Buffer Zone Rule.

You also ask how much money OSM will be spending on its rewrite of that rule, and the source of those funds. The funds for staff, as well as travel, associated with OSM's current Stream Protection Rulemaking effort come from annual discretionary funds appropriated to OSM. In addition to annual appropriations, by letter dated June 16, 2010, to the Congressional Appropriations Subcommittees on Interior, Environment and Related Agencies, the Secretary requested a reprogramming of \$7.0 million of OSM's FY 2010 regulation and technology appropriated funds to support the EIS associated with the Stream Protection Rule.

The reprogramming was approved by the House and Senate Subcommittees, and the majority of that funding was awarded to a contractor in FY 2010 to prepare the EIS. As of February 8, 2011, the total expenditures for developing the Stream Protection Rule and related documents, including salary and travel, are approximately \$4.4 million.

Concerning costs to the states to implement the 2008 rule, no actual implementation costs have been incurred to date, as no states have yet implemented the requirements of that rule. As OSM is still in the process of developing the requirements and analysis for its proposed Stream Protection Rule, it is unable as yet to provide estimates as to potential costs to states to implement it.

In closing, OSM is still in the early stages of the full rulemaking process. The public, the states, and stakeholders will continue to play a central role at every appropriate step. I greatly appreciate your interest in the analysis upon which this rule will be based. Although that analysis is still being developed, I am available to meet with you to discuss where OSM is in the process, and the basis for actions under consideration. I am also available to update you as OSM moves forward in the process. Please do not hesitate to let me know if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph G. Pizarchik". The signature is written in a cursive style with a large initial "J" and "P".

Joseph G. Pizarchik
Director

Enclosure

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

February 10, 2011

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining, Reclamation and Enforcement
U. S. Department of Interior
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Director Pizarchik,

As you are aware the House Committee on Natural Resources is conducting an investigation into the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule."¹

As part of the investigation it is requested that the following be delivered to me no later than March 18, 2011. Please provide copies of information on meetings and all correspondence including emails, letters, faxes, and phone logs between your office, and the following federal agencies and offices, states and non-governmental organizations:

1. Federal Agencies and Offices:

- Ms. Carol Browner, White House Office of Energy and Climate Change Policy
- Ms. Lisa Jackson, Administrator of the Environmental Protection Agency (EPA)
Mr. Peter Silva, Assistant Administrator Office of Water - EPA
Mr. Bob Sussman, Deputy Administrator - EPA
Mr. Greg Peck, Chief of Staff, Office of Water - EPA
- Ms. Nancy Sutley, Chair of the Council on Environmental Quality (CEQ)
Mr. Michael Boot, Associate Director for Land and Water Ecosystems - CEQ
Mr. Amelia Salzman, Associate Director for Policy Outreach - CEQ
- Mr. Ken Salazar, Secretary of the Interior
Mr. David J. Hayes, Deputy Secretary
Mr. Steve Black, Counselor to the Secretary
Ms. Hilary Tompkins, Solicitor of the Interior
Ms. Rhea Suh, Assistant Secretary, Policy Management and Budget
Mr. Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks
Ms. Wilma Lewis, Assistant Secretary, Land and Minerals Management

¹ <http://edocket.access.gpo.gov/2010/pdf/2010-14727.pdf>

- Ms. Anne Castle, Assistant Secretary, Water and Science
- Mr. Larry Echo Hawk, Assistant Secretary, Indian Affairs
- Mr. Jonathan Jarvis, Director, National Park Service (NPS) and/or other NPS employees
- Mr. Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service (FWS) and/or other FWS employees
- Ms. Marcia McNutt, Director, U.S. Geological Survey and/or other USGS employees
- Mr. Mike Connor, Commissioner, Bureau of Reclamation
- Mr. Bob Abbey, Director, Bureau of Land Management (BLM) and/or other BLM employees
- Ms. Jo Ellen Darcy, Army, U.S. Assistant Secretary of the Army (Civil Works)
- Ms. Meg Smith, Chief, Regulatory Program, Army Corps of Engineers

2. States:

- Alabama
- Indiana
- Kentucky
- New Mexico
- Utah
- Texas
- Virginia
- West Virginia
- Wyoming

3. Non-governmental Organizations:

- Appalachian Citizens Law Center
- Appalachian Voices
- Earthworks
- Keeper of the Mountains
- Kentuckians for the Commonwealth
- National Parks Conservation Association.
- Northern Plains Resource Council
- Ohio Valley Environmental Coalition
- Save Our Cumberland Mountains
- Sierra Club
- Southern Appalachian Mountain Stewards
- Southern Utah Wilderness Alliance


The Honorable Joseph G. Pizarchik
February 10, 2011
Page 3

- Waterkeeper Alliance
- West Virginia Highlands Conservancy
- WildEarth Guardians

It is our understanding that the Department of the Interior is a customer of ZANTAZ. Please use the ZANTAZ software to identify and retrieve the information requested above.

Your cooperation and prompt response to this request is appreciated.

Sincerely,


Doc Hastings
Chairman

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

February 8, 2011

The Honorable Joseph G. Pizarchik
Director
Office of Surface Mining, Reclamation and Enforcement
U. S. Department of Interior
1951 Constitution Avenue, NW
Washington, DC 20240

Dear Director Pizarchik,

Recent news reports have highlighted the significant job losses and economic impacts that could result from changes being considered by the Office of Surface Mining (OSM) to fifteen elements of its coal mining regulation program. According to an official document obtained by the Associated Press, the agency's preferred "Stream Protection Rule" could cost at least 7,000 jobs and reduce production in 22 states. While it's incredibly troubling that the Administration is admitting its rule would eliminate thousands of jobs, it's even more alarming that these numbers appear to be conservative estimates. It is deeply concerning that OSM is proceeding with a sweeping rulemaking that will devastate our Nation's ability to produce energy, cripple state budgets, and destroy good paying jobs for tens of thousands of families around the country.

There are real questions about the need to revise these rules given that the original "Stream Buffer Zone Rule" was finalized just two years ago in December 2008 after a multi-year deliberative process that included extensive environmental analyses and public comment. OSM's first attempt to revoke this rule was stopped by the Courts. However, it's clear that OSM and the Administration never intended to let the 2008 rule stand as stated in OSM's June 18, 2010 Federal Register Notice: "we had already decided to change the rule following the change of Administrations on January 20, 2009."¹

Clearly the Administration has preconceived notions of the changes it wants to execute and is pursuing those goals on a self-imposed deadline without any adequate consideration of the impacts on workers, jobs or communities.

The Committee intends to conduct thorough oversight on this issue and the economic impacts of the proposed rule. Please provide me the analysis OSM has conducted on the specific impacts of the present rulemaking effort with regards to:

¹ <http://edocket.access.gpo.gov/2010/pdf/2010-14727.pdf>

1. Jobs and employment in coal mining, projected decreases in U.S. coal production and the impact on other industries and coal-dependent jobs as a result of this rulemaking.
2. Revenues shared with state and tribal entities, specifically estimates of losses related to AML funds for states and tribes and tribal revenue sharing through production royalties and lease bonus bids; and lost revenues from state severance and sales taxes.
3. Efforts by OSM to consider the impacts of this rulemaking to domestic electricity costs related to coal production declines identified in the EIS.
4. Environmental analysis and supporting scientific documentation.

Also, while your office quickly prepares that information, I would seek a response to the following questions no later than February 25, 2011:

1. The current rule, which OSM is attempting to revoke, was the result of years of public participation and the product of multiple state and agency involvement. Why is OSM under such tremendous haste to conduct such an overarching rulemaking to replace the current rule?
2. How many job losses does OSM consider acceptable in selecting a preferred alternative? Please state a maximum number.
3. OSM's draft EIS states that subsidence from underground longwall mining that impacts streams on the surface will be considered material damage and will therefore not be allowed. How many underground coal mining jobs are anticipated to be lost in each impacted state because of the proposal?
4. Has OSM considered pursuing a rulemaking that would help create jobs?
5. Does OSM plan to evaluate the rulemaking under the January 18, 2011 Executive Order 13563, "Improving Regulation and Regulatory Review?" In addition, how has OSM complied with Executive Order 13211 "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use"?
6. How did OSM select the contractor for preparing the draft EIS and what experience or credentials do the contractor and any subcontractor, possess with respect to coal mine planning and operations and coal markets?

The Hon. Joseph G. Pizarchik
February 8, 2011
Page 3

7. Would you provide the names and affiliation of the members of the DEIS Mining Analysis team and the Subject Matter Experts used in the informal elicitation process?
8. Considering that portions of the OSM's rule have been leaked to various media outlets, would you please provide the Committee with a complete copy of the draft rule and EIS?
9. How much money was spent by OSM on the preparation of the 2008 rule throughout its development? How much money will OSM be spending on this rewrite of that rule and what is the source of these funds?
10. What is your estimate of the costs to the states to implement the 2008 rule and the additional money to implement the new rule?

The stakes are too high for the Administration to arbitrarily impose job-destroying policies and rewrite rules. OSM's hasty pursuit of new regulations that admittedly will destroy thousands of jobs will be examined by this Committee. A prompt response to these requests is appreciated.

Sincerely,



Doc Hastings
Chairman

Cc: The Honorable Ken Salazar, Secretary, Department of the Interior