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

September 19, 2013

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The Honorable Sylvia Mathews Burwell
Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Mathews Burwell:

On September 4, 2013, a subpoena was issued to you as Director of the Office of Management and Budget (“OMB”) for certain documents related to the Obama Administration’s decision to retroactively sequester money paid to states under the Secure Rural Schools (“SRS”) program. The subpoena required that the requested documents be provided to the Committee on Natural Resources (“Committee”) no later than 12 noon on September 18, 2013.

The deadline has now passed, and OMB has failed to provide any of the documents that were the subject of the subpoena and has not indicated when compliance may be expected. OMB’s failure to timely comply with this duly authorized and issued subpoena frustrates the Committee’s constitutional obligation to conduct oversight of the Executive Branch. I strongly urge you to comply fully and expeditiously with this subpoena; otherwise, the Committee may take action as necessary to enforce the subpoena.

Committee’s Oversight Authority is Clear and Well Established

On March 19, 2013 the Obama Administration announced, pursuant to the Budget Control Act of 2011, as amended, that it was requesting the return of \$17.9 million in payments that had already been disbursed to states under the Secure Rural Schools program. The SRS payments have provided a vital funding source for rural communities whose economies have suffered due to the mismanagement of the nation’s timber resources. The SRS money helps local governments pay for schools, fire departments, and other necessary services.

Pursuant to House Rule X(1)(m), the Committee has broad oversight jurisdiction over matters affecting public lands generally and forest reserves created from the public domain, including the programs and activities operated pursuant to the Secure Rural Schools and Community Self-Determination Act of 2000, as amended. Under House Rule X(2)(a)-(b), the

Committee is responsible for conducting oversight to evaluate the application, administration, execution, and effectiveness of Federal laws under its jurisdiction and for considering enactment of changes in Federal law, the organization and operations of Federal agencies, and conditions or circumstances that may indicate the necessity of new or additional Federal legislation.

The Committee has been conducting oversight to determine how and why the Administration determined to subject SRS payments that were made in January 2013 based on fiscal year 2012 revenues to the March 2013 sequester, including seeking information about the policy options considered, legal analysis about the decision, and discussions about potential penalties for states that failed to comply with the Administration's demand.

Department's Inaction Necessitated Subpoena

A letter was sent to OMB on May 20, 2013, requesting that information and documents be provided by June 3, 2013. After no response for almost two months, a follow-up letter was sent to OMB on July 18, 2013, requesting that the documents and information be provided without further delay. That letter also went unanswered.

A third letter was sent July 31, 2013, informing OMB that the Committee was prepared to compel production of the requested documents and providing a final opportunity to comply voluntarily with the Committee's May 20 oversight request.

OMB's Associate Director for Legislative Affairs sent a letter on August 2, 2013, providing a narrative explanation of the rationale for the SRS sequestration decision and links to two documents on the White House website. OMB's response did not provide any of the internal documents that had been requested in the May 20 letter. After an inquiry by Committee oversight staff about whether any additional information was forthcoming, OMB sent the Committee on August 9, 2013 copies of six OMB memoranda that are publicly available on the White House website and a copy of a letter from the Government Accountability Office. These documents concern sequestration generally and do not advance the Committee's understanding of the specific considerations that were at issue in the Administration's SRS decision.

On an August 28, 2013, conference call, OMB declined to tell the Committee oversight staff what steps, if any, had been taken in the months since receiving the Committee's May 20 request to preserve, collect, or process potentially responsive documents. OMB staff offered a briefing with unidentified OMB officials to address any outstanding need the Committee may have for information about the SRS decision. Committee oversight staff has informed OMB that a briefing alone, without the opportunity to review the underlying documents that had been requested since May, would be insufficient to satisfy the Committee's oversight needs.

OMB's Lack of Response is in Violation of Congressional Subpoena

Pursuant to Committee Rule 4(d), a subpoena was served on OMB on September 4, 2013 seeking five categories of documents covered by the May 20 request letter. OMB sent a letter dated September 9 reiterating its offer to conduct a briefing "to further describe OMB's role in [the U.S. Department of Agriculture's] decision-making process would be the best formation to

further address” the Committee’s oversight needs. OMB staff indicated during a September 17, 2013 conference call that it had begun its search and expected to identify a large volume of potentially responsive documents and offered to conduct a briefing with unidentified staff so they could better understand the Committee’s oversight needs. However, no further written response, and none of the requested documents covered by the subpoena, were provided by OMB by the subpoena’s 12 noon deadline.

During a conference call the afternoon of September 18, after the compliance deadline had passed, OMB staff requested Committee staff meet with a senior OMB budget staff person to discuss unspecified questions about the scope of the September 4 subpoena.

Committee staff, dating back to May 28, 2013, have offered to make themselves available and remain willing to answer any specific questions OMB may have about the Committee’s oversight interest or the scope of the document requests. However, OMB has not articulated a specific question or uncertainty about the meaning or scope of the Committee’s document request and now subpoena that would explain its continued refusal to provide the necessary information.

As Committee staff work to answer questions about the scope of the September 4 subpoena, it must be noted that a staff briefing or discussion alone – without review of the requested documents – is insufficient to satisfy the Committee’s oversight interest and that full compliance with the subpoena is expected. Review of responsive documents is a superior and more accurate means to obtaining the details of the SRS decision than can be learned in an off-the-record briefing. At the appropriate time, the Committee may request interviews with relevant OMB staff to answer additional questions and to obtain context or nuance that may be lacking in the documents themselves.

To date, OMB has not identified in writing any specific documents that are being withheld or the legal basis that would justify their withholding in response to a Congressional oversight request.

The instructions attached to the subpoena describe the process to be used in identifying any documents being withheld for any basis. Claims of privileges are considered under Committee Rule 4(h) and, similar to all common-law privileges, are applicable only at the discretion of the Chairman.

In fact, OMB’s September 9 response fails to assert any Constitutionally based privilege to excuse its noncompliance and does not request the subpoena be held in abeyance pending an assertion of Executive Privilege by the President. To be clear, a generalized claim of an Executive Branch confidentiality interest, common law privileges, and Freedom of Information Act exemptions, or large volume of potentially responsive documents are not a legal basis for withholding information from Congress or refusing to comply with a duly authorized and issued Congressional subpoena.

Due to the failure to provide a timely and complete response, this letter informs you that you are in violation of the September 4 subpoena. It is expected that OMB will fully and promptly comply with this duly authorized and issued subpoena without delay. In the absence of full compliance, the Committee may take such steps as necessary to enforce the subpoena.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings
Chairman