



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 DOI 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