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OFFICE OF THE SECRETARY COMMITTEE ON RESOURCES
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APR 27 2012

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

Dear Mr. Chairman:

This supplements our previous responses to your subpoena of April 12, 2012, and prior letters requesting documents related to the Department's ongoing Stream Protection rulemaking process.

The Committee on Natural Resources' (Committee) January 25, 2012 letter to the Department as well as the April 5, 2012 subpoena sought documents related to the Department's decision to conduct a new Environmental Impact Statement (EIS) to support the Stream Protection rulemaking rather than a supplement to the EIS developed in connection with the 2008 Stream Buffer Zone Rule, as the Department had previously indicated it would do in the November 30, 2009 Advanced Notice of Proposed Rulemaking (ANPR). On February 9, 2012 the Department produced to the Committee the April 30, 2010 Notice of Intent (NOI) and an internal memorandum, both of which described how, in response to 32,750 comments received on the November 30 ANPR, the Department determined that development of a comprehensive stream protection rule – one substantially different in scope than the 2008 Stream Buffer Zone Rule – would better advance statutory requirements. As a result of the changed scope of the new rule, the Department determined a new EIS was required. In addition to the documents produced on February 9, the Deputy Director of the Office of Surface Mining (OSM) briefed Committee staff on this issue on February 23, 2012, providing the same explanation as contained in the documents.

Since that production and briefing in February, we have continued to collect and review relevant documents. With this letter we are producing additional documents explaining the Department's decision to conduct a new EIS, and we are offering *in camera* review of preliminary drafts of the April 30 NOI. The explanation of the Department's decision in these additional documents is consistent with the explanation in the documents and briefing we previously provided.

As both the Executive Branch and Congress have recognized, however, they each have important interests that the other must strive to accommodate in the course of the oversight process. As we have explained previously, the Committee's subpoena and requests directly implicate the separation of powers between the two branches with respect to rulemaking and the Executive Branch's long-recognized interest in preserving the confidentiality of its pre-decisional deliberations especially regarding an ongoing rulemaking. We have nonetheless worked continually and in good faith to accommodate the Committee's interest in obtaining information that would further its legitimate legislative responsibilities. Through our productions of documents, offers of *in camera* review of documents, and briefing, we have provided the

Committee with substantial information that addresses the Committee's interests. Consistent with the established accommodation process, and so that we can consider what further accommodations may be feasible, we request that the Committee clarify what questions, if any, remain regarding the Department's decision to undertake a new EIS or what further information, if any, the Committee needs regarding the April 30 NOI.

In addition, as articulated in the Department's April 12, 2012 letter, the Department has been working with a transcription service to improve transcripts of recorded meetings between an initial contractor and OSM staff regarding a draft EIS and draft Regulatory Impact Analysis in support of a proposed Stream Protection Rule. We provided with that letter five of those improved transcripts, from which we redacted deliberative information regarding the ongoing rulemaking. With this letter, we are providing five additional improved transcripts, which have also been redacted in the same fashion. We will continue to provide additional improved versions of the transcripts as they become available.

Finally, on April 12, 2012 we also produced two drafts of the November 30 ANPR regarding the Stream Protection Rule: the draft the Department provided to the Office of Information and Regulatory Affairs (OIRA) to initiate the interagency review process as well as the draft on which OIRA concluded its review. These documents supplemented the final ANPR, which we produced to the Committee on February 9. In a call with Committee staff on April 16, we asked whether, in light of the disclosure of these drafts, the Committee could identify any specific interests or questions the Committee continues to have regarding the ANPR or its development. Unfortunately, Committee staff were unwilling to do so, and we are not in a position to consider further accommodations based on only a generalized desire for more information. Particularly given the efforts we have already made to accommodate the Committee's legitimate interests, providing us with a more specific description of the Committee's specific remaining interests and informational needs would not burden the Committee and would be an appropriate reciprocal accommodation of the Executive Branch's important interests. Consequently, we again request that the Committee clarify what, if any, particularized need it has for more information regarding the ANPR or its development.

Over the last year, the Department has undertaken continual, significant and good-faith efforts to respond to the Committee's requests for information related to the Department's ongoing Stream Protection Rule rulemaking process to the extent possible. We look forward to continuing to work with the Committee to address its interests in a manner that respects the separation of powers and the Executive Branch's deliberative confidentiality interests.

Sincerely,



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

cc: The Honorable Edward Markey, Ranking Member