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TODD YOUNG  
CHIEF OF STAFF

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

January 25, 2012

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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:

It is with disappointment and deep frustration that we must again write regarding the Department of the Interior's failure to comply in a meaningful way to our April 25, 2011 request seeking 5 categories of documents related to White House edits that led to the inclusion of the 6-month Gulf of Mexico drilling moratorium in the Executive Summary of the final May 27, 2011 report entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf" ("ISM Report"). The revisions in question implied that the moratorium had been peer reviewed by technical experts, who had provided input into the report's recommendations, when in fact, they had not reviewed or endorsed the moratorium in the Executive Summary of the final report. A November 8, 2010 report from the Department's Office of Inspector General ("OIG") "determined that the White House edit of the original DOI draft Executive Summary led to the implication that the moratorium recommendation had been peer reviewed by the experts." Many months have passed and yet the Department has provided virtually no responsive materials and, in fact, has blocked the OIG from providing documents requested by the Committee. This letter provides notice of our intent to move to compel cooperation and production of documents and communications in accordance with the deadlines listed below.

**I. Department's Failure to Comply**

Since our April 25, 2011 request, the Department has flouted this inquiry and defied repeated efforts to obtain documents and communications related to this matter. To be clear, during this nine months the Department has provided 15 pages of documents responsive to the requests that were not already disclosed by the OIG.

Following our April 25, 2011 request letter, an inquiry was received from Department staff in May 2011 seeking clarification of one part of the request, which was promptly provided.

Then, not a single page of responsive material was provided by the Department until August 1, 2011, when the Department provided us copies of the OIG's report and 11 attachments – all of which the OIG had already promptly provided to us on May 11, 2011. Despite having provided no information that was not already in our possession, the Department said in this August 1, 2011 communication that it could not further respond to our request without additional clarification. Our original April 25, 2011 request sufficiently described the narrow universe of information sought and the fact that the Department produced not a single document or communication that was not assembled and already disclosed by the OIG is not due to a lack of clarity, but a lack of compliance.

The request seeks 5 categories of documents related to the editing of the Executive Summary, including drafts and emails transmitting edits to Executive Summary of the final ISM Report and communications with the peer reviewers on the draft. The Department is certainly aware of which Department officials, likely limited in number, would have been engaged in editing and review of this document, and these activities occurred only during a defined period of time between April and June 2010. However, the Department has provided zero documents in response.

During an August 2, 2011 meeting, Committee staff reiterated that full compliance with the request was expected and provided specific subjects within our request that we wanted the Department to address in its response: information about who from the White House was involved in editing the document, communications between the Department and the peer reviewers before and after the ISM Report was issued, and the internal management clearance form for the report. In an August 15, 2011 letter, we encouraged the Department to seek clarification promptly of the request as necessary, adding the “fact that an item request may require the production of a large number of documents or documents that DOI prefers not to produce does not make the request unclear.” In a letter dated August 16, 2011, the Department provided copies of seven almost identical form letters sent by Deputy Secretary David Hayes apologizing to the peer reviewers for falsely conveying their endorsement of the six-month drilling moratorium, along with a copy of the internal management clearance form for the final report. We do not understand why it took the Department almost 4 month to provide us with these 8 documents totaling just 15 pages. All the more incredible is that these 15 pages are the sum total to date of the Department's own efforts to respond to our request.

We also have very real concerns about the adequacy of the Department's search for documents. For example, during an August 19, 2011, meeting, Department staff informed Committee staff they had not identified any emails between Department staff and the peer reviewers sent *after* the report was issued and explained the search had been limited to only the email files of only one DOI official. Committee staff responded that the Department needed to search the email files of additional Department staff. In a September 28, 2011 letter, we said we expected the Department to produce by October 5, 2011 emails sent between the additional Department staff and peer reviewers after release of the ISM Report. After passage of this deadline with no response, we sent a letter on October 13, 2011 reiterating our request for these emails. Several days later, we received a letter dated October 13, 2011 from Department staff stating the Department was still in the process of searching for and processing these emails and it

expected “to respond to the Committee’s request regarding these communications in the near future.” We are still awaiting the Department’s response three months later.

To be clear, documents concerning communications between Department officials and White House staff or with the peer reviewers about drafts of the ISM Report were included within the scope of our original April 25 request, and our subsequent efforts to provide clarity to the Department were intended to prod compliance and in no way diminished our repeatedly stated interest in obtaining all documents concerning these communications. Our understanding is that Department officials communicated with the peer reviewers on or about May 23, 2010 as part of their review of the draft ISM Report, that after the final report was issued one of the peer reviewers personally contacted a DOI official who later informed you about his concerns with the Executive Summary and then drafted the apology letter, and that you hosted a conference call with the peer reviewers in June 2010. Yet the Department has provided no documents on these matters in the nine months since our request, including drafts of the apology letters, emails concerning the peer reviewers comments to DOI staff before and after the ISM Report was issued, or the June 2010 conference call with the peer reviewers.

## **II. Department’s Deliberate Withholding of Office of Inspector General Documents**

In addition to its near total defiance of our oversight requests, the Department has intervened and frustrated our attempts to obtain information from the OIG about its investigation into the editing of the ISM Report. The Department has actively prevented the OIG from providing documents to us.

As described above, we sent a separate request to the OIG also on April 25, 2011. The OIG promptly responded on May 11, 2011 and provided us with a copy of its November 2010 investigative report and copies of 11 attachments to the report. The OIG’s response, however, informed us it was unable to provide 6 additional attachments that the Department’s Office of Solicitor had claimed “reflect or constitute predecisional and deliberative interagency communications relating to the manner in which the 30-Day Safety Report was finalized, and thus raise important confidentiality interests of the Executive Branch.” The OIG’s letter said the Solicitor’s Office would be communicating directly with us to discuss its claim. The OIG concluded by clarifying that its investigation was “unable to independently conclude whether the implications contained in the 30-Day Report were intentional or not.”

We did not receive any communication from the Department about its concerns until after we sent a follow up letter on July 18, 2011. During a July 29, 2011 conference call, Solicitor’s Office staff offered to provide an index of the 6 withheld attachments and to allow Committee staff to review 1 of the 6 withheld attachments. Committee staff agreed to this as an interim step but reiterated that we continued to expect compliance with the full request. During the August 2 meeting described above, Committee staff reviewed this 1 attachment: a copy of an OIG document summarizing emails between DOI senior officials and White House staff sent May 26, 2010 and May 27, 2010 that were transmitting edits to the Executive Summary.

In a letter dated August 1, 2011 letter, Department staff stated that it was unable to provide us with a copy of that one withheld attachment because it implicated important Executive Branch confidentiality interests. It did not provide any explanation about why it could not provide the other 5 documents being withheld. As described above, we sent a letter to you on August 15, 2011 expressing frustration with the Department's response to this and two other requests for information. In a letter dated August 16, 2011, your staff offered to make available for inspection two more of the withheld attachments to the OIG report. [As described above, this letter also transmitted copies of the apology letter Deputy Secretary Hayes sent to the peer reviewers and the internal management clearance form for the final report.]

On August 19, 2011, Committee staff reviewed these 2 withheld OIG attachments: copies of two emails between Department officials and White House staff transmitting the drafts of the Executive Summary that were discussed in the other OIG attachment Committee staff had reviewed on August 2. The Department's August 16 letter states these two emails "constitute all of the email communications between senior officials in the Department and White House staff that were described in the [previously reviewed OIG document]." However, this narrow response does not make clear whether the Department has other potentially responsive documents reflecting communications with the White House or edits made by the White House that were not described in the OIG document.

In a letter dated August 17, 2001, the OIG provided us an additional 22 documents and informed us that it was unable to provide an additional 7 documents it had identified per directions from the Department's Solicitor's Office. So, at the aforementioned August 19, 2011 meeting, Committee staff requested copies of the 7 newly identified OIG documents that the Department was withholding, to which Department staff responded they could not provide these 7 documents until after they had reviewed them. In the letter dated September 28, 2011 discussed above – sent almost a month and a half after we were first informed that the Department needed to review the 7 newly identified OIG documents – we reiterated our request for the 7 documents supposedly undergoing review. After no response, we sent yet another letter on October 13, 2011, demanding full and complete compliance with the request. It is difficult to comprehend how it could legitimately take the Department two months to review these 7 documents.

By letter dated October 13, 2011, Department staff responded that the 7 newly identified OIG documents concern Executive Branch confidentiality interests and "do not pertain to the subject of your inquiry." It is not appropriate for the Department to unilaterally determine what does or does not pertain to our investigation. It also strains credulity to say the documents in question, which were compiled by the OIG as part of its investigation into the White House's editing of the ISM Report, do not pertain to our investigation into the White House's editing of the ISM report. The Department has also asserted that these documents implicate some confidentiality interest without claiming any specific privilege and offers a belated "accommodation" of providing Committee staff with more information on these documents. This is unacceptable and is consistent with the pattern of delay the Department employs in response to the Committee's requests.

We have difficulty understanding the Department's concern about releasing these OIG documents, other than the fact some of them discuss communications between Department officials and White House staff. That alone is an insufficient excuse for withholding the OIG documents from the Committee. The events discussed in the documents are already publicly known and reflected in the OIG's public November 2010 report. Furthermore, disclosure of these documents could not injure an ongoing deliberative process, as the ISM Report was finalized and publically released a year and a half ago and already subject to litigation, which the Department lost. The production of all 13 documents that the Department has blocked the Inspector General from providing is expected by February 1, 2012 absent a valid claim of Executive Privilege by the President.

### **III. Department's Vague Privilege Claims are Without Merit**

We have exhibited considerable patience and restraint in light of the Department's disregard for this legitimate oversight request. The Department has generally and vaguely said a number of the documents we are seeking implicate confidentiality interests of the Executive Branch. As has been explicitly expressed in multiple letters and staff conference calls, the generalized claim of an Executive Branch confidentiality interest is not a legal basis for withholding information from Congress. Even if this claim could be considered a privilege assertion, as we have noted to you on numerous occasions, including our April 25 request letter and July 18 and August 15 follow up letters, claims of privileges 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 are especially troubled by the Department's apparent disregard for our oversight authority, notwithstanding 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.)

To date, the Department has asserted a generalized claim of an Executive Branch confidentiality interest as the reason for refusing to provide requested material. As we expressed in the letter dated August 15, 2011, 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.

As best we understand the Department's arguments to date, the Department considers certain withheld information to be protected from disclosure to Congress by the deliberative process privilege. As a qualified privilege, the deliberative process privilege is not an absolute bar against disclosure and, regardless, cannot be used to shield purely factual information. Even under its faulty logic, the Department would be obligated to examine each document and provide non-privileged portions in response to a public request under the Freedom of Information Act ("FOIA"). The Department's response to our April 25 request appears to fall short even of what it would be obligated to provide the public under FOIA. 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. This is unacceptable and cannot continue.

#### **IV. Final Opportunity for the Department to Comply**

It is expected that the following items will be provided by the Department no later than February 9, 2012. Although these subject areas were encapsulated within the categories of documents in our April 25 request, we request the Department provide copies of these specific documents described below by this date. This in no way limits or excuses the Department from full compliance with complying with these prior, standing requests not reflected below. Please focus your response on documents generated by, received by, or prepared for Elizabeth Birnbaum, Walter Cruikshank, Mary Katherine Ishee, David Hayes, Steve Black, Neil Kemkar, Hilary Tompkins, Constance Rogers, Wilma Lewis, and Rhea Suh between the dates of April 20, 2010 and June 30, 2010, including any documents prepared for or sent to Secretary Salazar. Based on our review of the material provided by the OIG, it is expected that such documents exist and the Department should be able to locate them without any undue delay or burden. An attachment to this letter provides additional information about responding to the Committee's request, including definitions and instructions for compliance.

1. Documents concerning the decision to include a moratorium in final ISM Report, including any analysis of legal authority for or economic impacts from the 6-month moratorium included in the Executive Summary.
2. Documents, including emails or other communications, concerning edits, revisions, or changes to the draft Executive Summary of the ISM Report made prior to May 25, 2010.

3. Documents, including emails or other communications, concerning edits, revisions, or changes to the draft Executive Summary of the ISM Report made on or after May 25, 2010.
4. Documents concerning communications with the peer reviewers, including emails or other documents transmitting drafts of the ISM Report and/or Executive Summary to the peer reviewers and talking points or other materials, meeting summaries, or staff notes concerning any conference calls or meetings with peer reviewers that occurred in May 2010.
5. Documents related to the apology letter David Hayes sent to peer reviewers on or about June 4, 2010, including drafts of the letters.
6. Documents concerning any conference calls and/or any follow up meeting between Secretary Salazar and peer reviewers during June 2010, including emails, calendar entries, talking points or other briefing materials, and meeting notes.
7. Documents concerning drafts of any press releases or communications materials concerning the release of the ISM Report and/or the 6-month moratorium referenced in the Executive Summary of the ISM Report.

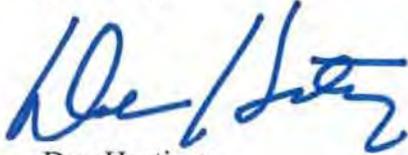
In addition, due to the Department's lack of compliance to date, we request the Department provide the following information by February 2, 2012:

8. Documents, including emails or memoranda, sent by the Department to staff with instructions for assisting with or responding to the OIG's 2010 investigation into the editing of the ISM Report.
9. Documents, including emails, sent by the Department instructing staff to search for and/or collect records responsive to our April 25 request to the Department.
10. Copies of the 13 OIG documents the Department claims are either not responsive or withheld on a claim of Executive Branch confidentiality interest.
11. Copies of any emails related to communications with the peer reviewers, as described in our September 28 and October 13, 2010 letters.
12. A copy of any index of administrative record prepared for the *Hornbeck* litigation challenging the 6-month moratorium referenced in the Executive Summary of the ISM Report.

Please contact us, or have your staff your staff contact Byron R. Brown, Senior Counsel for Oversight, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production of the requested material.

Thank you for the Department's prompt attention to this matter.

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

## 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

OCT 24 2011

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

Dear Chairman Hastings:

Your September 28 and October 13, 2011 letters to the Department requested additional information regarding thirteen documents the Office of Inspector General (OIG) held back from a document production to the Committee and certain email communications between Neal Kemkar and the engineers who peer reviewed the 30-Day Safety Report. The Department responded to your request regarding the OIG documents in a letter dated October 14, 2011 with information and an offer to discuss the documents further.

With this letter, the Department is providing email communications between Neal Kemkar and Steve Black and the peer reviewers regarding the portrayal of the scope of the peer review in the Executive Summary of the report. A search of the Department's email archives identified email communications between the peer reviewers and both Neal Kemkar and Steve Black, and communications with both are included on the enclosed CD, which is titled "00032227\_Hastings\_001" and contains 112 documents totaling 919 pages. Several of the documents contain minor redactions to protect personally identifiable information.

We look forward to continued cooperation with the Committee.

Sincerely,

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  
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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  
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BEN RAY LUJÁN, NM  
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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 relating to the Committee's investigation into whether senior officials of DOI, in an effort to help justify their decision to impose a 6-month moratorium on deepwater drilling in the Gulf of Mexico, misrepresented that the moratorium was reviewed and supported by a group of scientists and industry experts. Specifically, the Committee requested copies of the seven emails that were withheld by DOI's Office of the Inspector General per instructions from DOI's Office of the Solicitor, and any email communications between Mr. Kemkar and the engineers following the release of report "Increased Safety Measures for Energy Development on the Outer Continental Shelf" by October 5, 2011. The Committee did not receive a response from DOI.

As you are aware, the Committee began its investigation in July 2010 and the Committee's first request for documents and information to DOI was made in April 2011. Although some documents have been made available for review by Committee staff, 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 has only allowed a limited review of several documents or provided publically available documents 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 the non-response to official Congressional oversight of DOI. Over six months have passed, and on numerous occasions, the Committee has requested DOI produce the requested documents and information, and the Committee continues to wait for DOI to fully comply with all the 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 of April 25, 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



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

OCT 13 2011

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

Dear Chairman Hastings:

This letter responds to your letter of September 28, 2011 requesting additional information regarding the manner in which the scope of the peer review was presented in the Executive Summary of the 30-Day Safety Report.

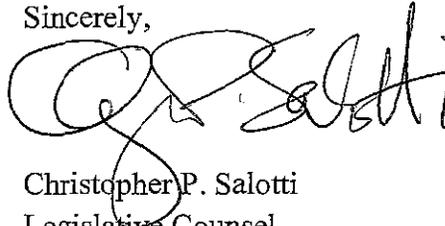
In your September 28 letter, you refer to thirteen documents the Office of Inspector General (OIG) held back from a document production to the Committee. An attachment describing these thirteen documents is enclosed with this letter.

As Department of the Interior staff conveyed to your Committee staff at the meeting referenced in your letter, six of the thirteen documents are the same as the six attachments to the OIG's 2010 Report entitled "Federal Moratorium on Deepwater Drilling" which, as the Department previously explained, implicate important Executive Branch confidentiality interests. In an effort to accommodate the Committee's oversight interests in a manner consistent with these confidentiality interests, the Department shared information with your staff regarding those six documents, and provided your staff with the opportunity to review *in camera* three of those documents at the Department, including two of the seven emails (Attachments #13 and #15) referenced by the OIG in its August 17, 2011 letter.

The remaining seven documents also implicate important confidentiality interests of the Executive Branch. Unlike the attachments to the OIG report, however, none of these documents pertain to the subject of your inquiry – that is, the exchange described in the OIG report concerning edits made to the peer review reference in the Executive Summary. In order to accommodate the Committee's interest while respecting the Executive Branch confidentiality interests described above, Department staff are able to meet with Committee staff to provide more information on these documents at their convenience.

The Department is in the process of searching for and processing communications between Neal Kemkar and the engineers who peer reviewed the technical recommendations included in the 30-Day Report regarding the portrayal of the peer review in the Executive Summary. We expect to respond to the Committee's request regarding these communications in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Salotti". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

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

Enclosure

Item No.#	Document Type	Document Description
12	OIG Investigative Activity Report	OIG's analysis of differences between drafts of executive summary of the draft 30-day report  Attachment #12 to OIG Report
13	E-mail	E-mail from Black to Aldy transmitting draft of 30-day report  Attachment #13 to OIG Report
14	Draft report (attachment to e-mail in Attachment 13)	Draft 30-day report  Attachment #14 to OIG Report
15	E-mail	E-mail from Aldy to Black transmitting two edited versions of the draft 30-day report  Attachment #15 to OIG Report
16	Draft report (attached to e-mail in Attachment 15)	Revised version of the draft 30-day report  Attachment #16 to OIG Report
17	Draft report (attached to e-mail in Attachment 15)	Revised version of draft 30-day report  Attachment #17 to OIG Report
27	Draft reports	Two revised drafts of the report that were included as Attachments 16 and 17 to the OIG Report and described in Attachment 12
29	Draft memo and draft report	Draft cover memo and draft of the 30-day report
30	E-mail	E-mail from Black to Aldy transmitting a draft of the 30-day report
31	E-mail, two draft reports	E-mail from Black to Kemkar transmitting two revised versions of draft of the 30-day report
32	E-mail, two copies of draft report, draft memo	E-mail from Kemkar to Aldy transmitting two copies of a draft 30-day report and draft cover memo
33	E-mail, draft report	E-mail from Black to Aldy with draft 30-day report
34	E-mail	E-mail from Kemkar to Black transmitting two revised versions of draft of the 30-day report

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TODD YOUNG  
CHIEF OF STAFF

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

September 28, 2011

EDWARD J. MARKEY, MA  
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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 are aware, the Committee is conducting an investigation into whether senior officials of the U.S. Department of the Interior (DOI), in an effort to help justify their decision to impose a 6-month moratorium on deepwater drilling in the Gulf of Mexico, misrepresented that the moratorium was reviewed and supported by a group of scientists and industry experts. The Committee has requested documents and information from both DOI and DOI's Office of the Inspector General.

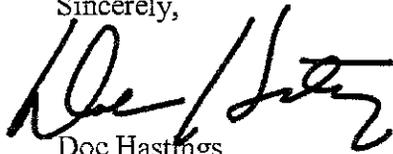
On August 17, 2011, DOI's Office of the Inspector General produced a number of documents to the Committee, but withheld thirteen documents, including seven documents which are email communications between senior DOI officials and the White House based on instructions received from DOI's Office of the Solicitor. On August 19, 2011, Committee staff met with DOI staff to review attachments 13 and 15 the DOI's Office of Inspector General's Report of Investigation on the Federal Moratorium on Deepwater Drilling (Report of Investigation). This meeting was part of an ongoing process that Committee staff has been engaged in with DOI staff to obtain responsive documents from DOI. During this meeting, Committee staff requested copies of the seven emails that were withheld by DOI's Office of the Inspector General. DOI staff indicated that they had recently learned of the emails and had not yet completed a review of the emails. Because it has been several weeks since this meeting, the Committee is confident that DOI has had sufficient time to review these seven emails, and requests that the seven emails now be provided to the Committee no later than October 5, 2011. These emails clearly fall within the Committee's original request to DOI for documents and information relating to the Report of Investigation made in April and reiterated in July.

Additionally, at the August 19<sup>th</sup> meeting, DOI staff informed Committee staff that they had conducted a search for any email communications between DOI and the engineers after the Report "Increased Safety Measures for Energy Development on the Outer Continental Shelf"

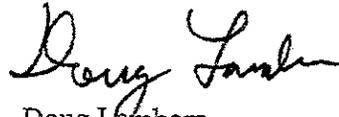
was made public and that no emails had been located. Committee staff had requested these emails be produced during a meeting with DOI staff held on August 2<sup>nd</sup>. DOI staff, however, limited the search to Steve Black's email account. At the August 19<sup>th</sup> meeting, Committee staff requested that the search be expanded to include a search of Neil Kemkar's archived email account. The Committee requests that copies any email communications between Mr. Kemkar and the engineers following the release of the report referenced above also be produced to the Committee no later than October 5, 2011.

We look forward to DOI producing these documents and fulfilling its obligation to respond to Committee's requests.

Sincerely,



Doc Hastings  
Chairman  
Natural Resources Committee



Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**AUG 17 2011**

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

Dear Mr. Hastings:

This is in response to your August 1, 2011 request for additional documents relating to the report from my office entitled, "Federal Moratorium on Deepwater Drilling." On August 10, members of my staff met with Committee on Natural Resources Chief of Staff Todd Young and Senior Counsel Traci Rodriguez and had a productive discussion that has assisted us in preparing this response.

We have identified the universe of documents that my office has that relate to our Moratorium report. We are providing you in the enclosed DVD an indexed copy of all of these documents with the exception of those documents described below that the Department of the Interior (Department), Office of the Solicitor has identified as "reflecting confidential, deliberative documents and/or communications between senior officials in the Department and the White House." My office is not asserting any privilege with respect to these documents. However, pursuant to written Department policies that were the product of negotiations between my office and Department officials (copies of which were provided to Mr. Young and Ms. Rodriguez at the August 10 meeting), my office is given access to all documents we request and the Department maintains the right to assert a privilege before any document is released, as it has done here.

There are 47 separate documents that we have identified and we are providing you all but thirteen of those documents. Of the thirteen excluded documents, seven documents are email communications between senior Department officials and the White House (some of which contain attachments of drafts of the "Increased Safety Measures for Energy Development on the Outer Continental Shelf" Report (ISM Report)); one is a May 26 draft memorandum from the Secretary to the President with a draft of the ISM Report; four are drafts of the ISM Report; and one is an Investigative Activity Report detailing our analysis of email communications between senior Department staff and White House staff.

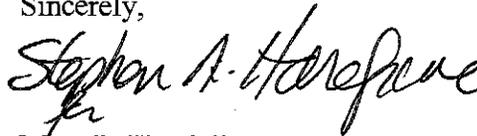
Your August 1 letter also asked us to identify individuals that we interviewed and sought to interview in connection with our Report of Investigation. The identity of the individuals we did interview are contained in the enclosed interview reports and agent interview notes. We are also providing you the transcript of the one interview that was recorded. No individuals declined to be interviewed during the course of our investigation. With respect to item (d) of your August 1 letter, we are not aware of any individuals or entities who received versions of the draft report

beyond those individuals identified in our report. If any such individuals do exist, that information would be with Department officials.

These documents contain information which is exempt from disclosure to the public under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. We respectfully request that you and your staff treat all of this information accordingly.

If you have any questions, please do not hesitate to contact me, or your staff may contact Kris Kolesnik, Associate Inspector General for External Affairs, at 202-208-5745.

Sincerely,

A handwritten signature in black ink that reads "Stephen A. Harpune". The signature is written in a cursive style with a small "pr" or similar mark below the name.

Mary L. Kendall  
Acting Inspector General

Enclosures



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

AUG 16 2011

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

Dear Chairman Hastings:

We are in receipt of your letter of August 15, 2011, regarding the Department's response to your April 25, 2011, letter seeking information on the Department of the Interior's Office of Inspector General Report of Investigation on the Federal Moratorium on Deepwater Drilling.

What follows is a response we had prepared to your April 25 request in light of our August 2, 2011 meeting with Committee staff. Because we believe the letter we have prepared responds to most of the requests you have identified as priority interests, we are providing this response as planned while we work to understand and accommodate remaining needs articulated to us.

While we disagree with some of the characterizations made in your August 15 letter, we very much appreciated the opportunity to meet with Committee staff in person on August 2 to facilitate their review of Attachment 12 of the the Office of Inspector General's 2010 report entitled "Federal Moratorium on Deepwater Drilling." This letter responds to the conversation between Committee staff and Department of the Interior personnel in that meeting regarding your April 25 letter.

The April 25 letter stated the Committee's view that the Office of Inspector General's report inadequately discussed the drafts of the Executive Summary and communications that the OIG reviewed, and requested information and documents "reviewed by the OIG in reaching its conclusion." Although the topic the Committee has expressed interest in – the manner in which the scope of the peer review was presented in the Executive Summary of the 30-Day Safety Report – was already publicly addressed by the Department and thoroughly examined by the independent OIG, which found no intent to mislead, the Department is committed to assisting the Committee in meeting its information needs regarding this issue.

We regret that your Committee staff was unable to fully access the information on the CD, including the eleven attachments to the OIG report. However, we have confirmed by testing a duplicate of the disk provided to the Committee that attachments 1 – 11 are available by either clicking on the citations to the attachments themselves within the text of the report, or by

clicking on the paper clip icon in the lower left-hand margin of the document. Should your staff continue to have difficulties accessing the information on the CD, we would be happy to assist them at their convenience.

We are pleased that the Department and Committee staff have engaged in a productive dialogue to help the Department accommodate the Committee's request for additional information regarding the documents at the heart of the OIG investigation.

We also appreciate acknowledgment in your August 15 letter of the accommodation reached with your staff regarding the review of an attachment to the OIG report that had not been included with the OIG report. As acknowledged in your letter, we had determined that attachment, an OIG Investigative Activity Report (IAR), implicates important confidentiality interests of the Executive Branch, as it describes in detail confidential, deliberative documents and communications between senior officials in the White House and the Department. This document provides the OIG's independent analysis and details the documents that your April 25 letter had criticized the OIG for inadequately describing in its report. The Department shared this document with Committee staff in order to assist the Committee with its oversight responsibilities while respecting Executive Branch interests.

As part of our July 29 conversation with Committee staff, as confirmed in our August 1 letter, we also had agreed to provide the Committee staff with an index of the remaining attachments to the OIG report that we have not provided because they implicate Executive Branch confidentiality interests. That document was provided on August 2, when Committee staff visited the Department to review the OIG IAR.

With this letter, the Department is offering additional accommodations in response to the questions raised by Committee staff in our August 2 meeting related to the scope of the peer review of the 30-Day Safety Report. Although attachments 13 and 15 of the OIG Report implicate important Executive Branch confidentiality interests, as an accommodation to the Committee, the Department invites Committee staff to the Department to view these documents at your convenience. Those attachments constitute all of the email communications between senior officials in the Department and White House staff that were described in the IAR.

As a further accommodation, we also are providing with this letter additional documents that the Committee has requested: copies of letters sent to the peer review scientists immediately following publication of the 30-Day Safety Report (we are not aware of any emails sent after the report regarding the representation of the scope of the peer review), as well as the official surname record of internal clearance of the 30-Day Safety Report. These documents are contained on the enclosed CD, titled "00028004\_Hastings\_001," and index.

We are committed to exploring further means of accommodating any remaining questions that the Committee has regarding the scope of the peer review for the 30-Day Safety Report in a way that respects Executive Branch confidentiality interests and the Department's resources. We

look forward to continuing to work with you on this matter, including by scheduling a time for Committee staff to view the documents described above.

Sincerely,



Christopher J. Mansour  
Director  
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  
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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

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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 the DOI and its bureaus during the 112<sup>th</sup> Congress. Although the August 1<sup>st</sup> 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 response to date and statements contained in the August 1<sup>st</sup> letter concerning the DOI's Office of Inspector General's Report of Investigation on the Federal Moratorium on Deepwater Drilling (Report of Investigation). The Committee's original request to DOI for documents and information relating to the Report of Investigation was made by letter dated April 25, 2011 and the request was reiterated in the Committee's July 18, 2011 letter.

The Committee appreciates DOI's statement in its August 1<sup>st</sup> letter that DOI recognizes this Committee's legitimate and important oversight responsibilities and pledge to work with the Committee to provide materials responsive to the Committee's needs. It is important that this recognition and pledge result in actual compliance. The Committee has reservations based on DOI's actions to date and failure to produce any responsive documents to the Committee's April 25<sup>th</sup> letter until August, months after the May 13<sup>th</sup> deadline imposed by the Committee. To avoid any confusion, your August 1<sup>st</sup> letter reference to a production of approximately 10,500 pages of documents by DOI concerns a separate document request the Committee has made to DOI regarding OSM's revision of the 2008 Stream Buffer Zone Rule. The Committee notes that the disc that was produced to the Committee on August 1, 2011 relating to the Moratorium contains only an unredacted version of the OIG's report, a report that the OIG provided the Committee in May. The disc does not contain the eleven attachments that your letter states were also being produced to the Committee.

In the August 1<sup>st</sup> letter, DOI noted that there have been conversations with Committee staff seeking clarity regarding request item (e) as set forth in the Committee's April 25<sup>th</sup> letter. On May 19, 2011, the first telephone conference call was held between DOI and Committee staff regarding the Committee's April 25<sup>th</sup> letter. During this call, DOI sought clarification about request item (e) and that Committee staff provided clarification via email that same day, noting that "in item 'e,' we are referring to 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.' This safety report was the subject of the Inspector General's Report of Investigation – Federal Moratorium on Deepwater Drilling Case No. PI-PI-10-0562-I." Despite that prompt clarification, no documents or information was forthcoming from DOI nor were there any further requests for clarity until after the Committee's letter of July 18<sup>th</sup>. These requests for further clarity came on the July 29<sup>th</sup> telephone call and DOI's letter of August 1<sup>st</sup>. While the Committee encourages DOI to seek clarification when necessary, it is disappointing for DOI to seek clarification of requests only after the original document production deadline has passed and the Committee has been forced to send a follow up letter. It creates the impression that DOI is not truly seeking clarification, but is engaged in unwarranted delay. If DOI has specific requests for clarification and explanation, they should be stated promptly. In reviewing each item request made by the Committee, they are stated plainly and clearly. The fact that an item request may require the production of a large number of documents or documents that DOI prefers not to produce does not make the request unclear.

Also during the July 29<sup>th</sup> conference call between DOI and Committee staff, Committee staff was invited to review the OIG Investigative Activity Report (IAR) and an index of withheld attachments to the IG Report. The IAR and the documents listed on the index had been previously withheld as privileged materials by DOI's Acting Inspector General based on instructions received from DOI's Office of the Solicitor. The Committee staff's review occurred on August 2, 2011. The Committee believes that this was a positive step taken by DOI to comply with the Committee's requests.

The Committee, however, disagrees with the assertion contained in your August 1<sup>st</sup> letter that after the review of the IAR, Committee staff had "committed that if the Committee ha[d] 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." As indicated in an email sent to DOI staff prior to the review and consistent with July 29<sup>th</sup> conversation held between Committee staff and DOI, the Committee fully reserved the right to continue to seek a more complete response to the document request contained in the Committee's April 25<sup>th</sup> letter and referenced in the Committee's July 18<sup>th</sup> letter. The email also noted that although the Committee was aware of the DOI's concerns about Executive Branch confidentiality interests, the Committee had not agreed to limit its original request nor was this limited review a substitute for complete compliance.

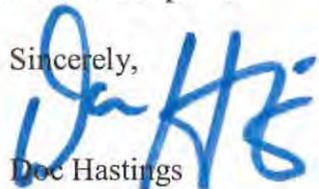
Cognizant of DOI's concerns, the Committee has previously provided DOI instructions in the April 25<sup>th</sup> letter on how to produce responsive documents that may contain information that implicate DOI's confidentiality concerns. If compliance with the document request cannot be

made in full, compliance shall be made to the extent possible and shall include an explanation why full compliance is not possible. *See* Instructions, ¶7. 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. *See* Instructions, ¶8. This request is continuing in nature and applies to any newly discovered information. *See* Instructions, ¶11. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the deadline set out in the original request, shall be produced immediately upon location or discovery subsequent thereto. *Id.*

Following the review of the IAR and index on August 2<sup>nd</sup>, Committee staff did provide some guidance to DOI staff about some specific items to help DOI focus its search for responsive documents and information. Committee staff also made it abundantly clear that this guidance did not limit the requests outlined in the April 25<sup>th</sup> letter nor was production of this focused information considered DOI's complete response to the Committee's requests. Specifically, DOI was requested to provide further details to the index Committee staff reviewed, such as who received carbon copies of the Attachment 13 and Attachment 15; identify who was involved in the editing of the drafts exchanged between DOI and the White House on May 26, 2011 and May 27, 2011; the surname of the Draft 30-Day Report (all versions); and any and all emails exchanged between DOI and the engineers after the Report "Increased Safety Measures for Energy Development on the Outer Continental Shelf" was made public. The Committee asks that this information be received by the Committee no later than August 29, 2011 and include the eleven attachments that DOI failed to include on the disc produced to the Committee on August 1<sup>st</sup>.

We look forward to DOI producing additional documents and fulfilling its obligation to respond to Committee's requests.

Sincerely,



Doc Hastings  
Chairman  
Natural Resources Committee



Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources

DOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
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TODD YOUNG  
CHIEF OF STAFF

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

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JOHN GARAMENDI, CA  
COLLEEN W. HANABUSA, HI

JEFFREY DUNCAN  
DEMOCRATIC STAFF DIRECTOR

August 1, 2011

The Honorable Mary Kendall  
Acting Inspector General  
U.S. Department of the Interior  
1849 C Street, NW – Mail Stop 4428  
Washington, DC 20240

Dear Ms. Kendall:

On April 25, 2011, we requested the underlying documents, drafts and communications reviewed by the Office of Inspector General (OIG) in reaching its conclusion and issuing its Report of Investigation – Federal Moratorium on Deepwater Drilling Case No. PI-PI-10-0562-I. Specifically, we requested the following items:

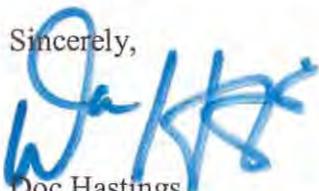
Any and all documents, referring, relating, or pertaining, directly or indirectly, to:

- a. The Report of Investigation – Federal Moratorium on Deepwater Drilling, including but not limited to emails or other communication regarding the Executive Summary or any portion of the draft report “Increased Safety Measures for Energy Development on the Outer Continental Shelf;”
- b. Drafts, revisions, excerpts, inserts, deletions, or other alterations or modifications of the Executive Summary or any portion of the draft report “Increased Safety Measures for Energy Development on the Outer Continental Shelf;”
- c. Witnesses or individuals interviewed or sought to be interviewed, whether formally or informally, in connection with the Report of Investigation – Federal Moratorium on Deepwater Drilling, including but not limited to interview transcripts, notes, summaries, letters, or other communications;
- d. Individuals or entities including their titles and telephone and mailing contact information receiving any version, in whole or in part, of the draft report pertaining to the “Increased Safety Measures for Energy Development on the Outer Continental Shelf” and the dates on which draft reports were received; and
- e. A moratorium on drilling including but not limited to communications.

A complete written response was to be provided to the Committee no later than May 13, 2011. On May 11, 2011, OIG provided the Committee with two copies of Report of Investigation – Federal Moratorium on Deepwater Drilling Case with eleven attachments. Six other attachments were withheld as potentially privileged per instructions given to OIG by DOI Deputy Solicitor Arthur Gary. In the letter which accompanied this production, OIG indicated that Mr. Gary would be contacting the Committee to assert DOI's claim of privilege over these withheld documents. Mr. Gary has not contacted the Committee in any manner to assert a privilege nor to extend an invitation to communicate directly with his office to reach a mutually agreeable accommodation regarding the six withheld attachments. Following the May 11th production, OIG has not produced any additional documents, including the names of the individuals or entities receiving any version, in whole or in part, of the draft report pertaining to the "Increased Safety Measures for Energy Development on the Outer Continental Shelf" and the dates on which draft reports were received or an inclusive listing of the witnesses or individuals interviewed or sought to be interviewed as requested in items c and d of the April 25<sup>th</sup> letter. See Request c,d.

Because it has been several months since OIG's production of documents, we write to ask OIG to confirm that its May 11<sup>th</sup> response is its complete written response to the Committee's April 25<sup>th</sup> letter. If not, the Committee requests that OIG provide additional responsive documents no later than August 16, 2011. Your response should conform with the Instructions included in the Committee's April 25<sup>th</sup> letter to you.

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. We look forward to your timely response.

Sincerely,  
  
Doc Hastings  
Chairman  
Natural Resources Committee

  
Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources



## 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 112<sup>th</sup> 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 (e) 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.

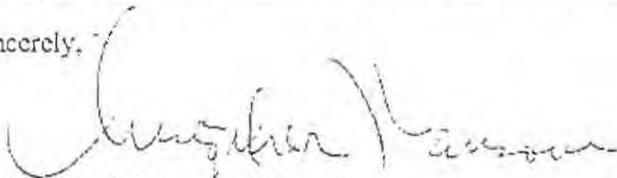
Regarding the remaining items in that letter, we have had several conversations with your staff seeking to fully understand the Committee's specific oversight interests in the hopes that we might better focus our search and accommodate the Committee's interests while still honoring

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

DOC HASTINGS, WA  
CHAIRMAN  
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ANDY HARRIS, MD  
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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  
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ENI F.H. FALLOMAVAEGA, AS  
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GRACE F. NAPOLITANO, CA  
RUSH D. HOLT, NJ  
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JIM COSTA, CA  
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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:

On April 25, 2011, we sent you a letter that requested documents, drafts and communications related to the Report of Investigation – Federal Moratorium on Deepwater Drilling Case No. PI-PI-10-0562- issued by the Office of Inspector General. Specifically, we requested the following items:

Any and all documents, referring, relating, or pertaining, directly or indirectly, to:

- a. The Executive Summary or any portion of the draft report, which was subsequently published by DOI as "Increased Safety Measures for Energy Development on the Outer Continental Shelf" on May 27, 2010;
- b. Drafts, revisions, excerpts, inserts, deletions, or other alterations or modifications of the Executive Summary or any portion of the draft report "Increased Safety Measures for Energy Development on the Outer Continental Shelf;"
- c. Witnesses or individuals interviewed or sought to be interviewed, whether formally or informally, in connection with the OIG Report of Investigation – Federal Moratorium on Deepwater Drilling, including but not limited to interview transcripts, notes, summaries, letters, or other communications;
- d. Individuals or entities including their titles and telephone and mailing contact information receiving any version, in whole or in part, of the draft report pertaining to the Increased Safety Measures for Energy Development on the Outer Continental Shelf and the dates on which draft reports were received; and
- e. A moratorium on drilling including but not limited to communications.

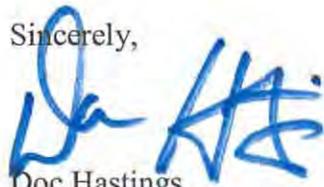
We requested that a complete written response be provided to the Committee no later than May 13, 2011. Two months have passed since this deadline, and we still have not received any written response to this letter from DOI. This is simply unacceptable.

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. Given DOI's failure to meet the previous deadline, we request that a complete written response be provided to the Committee no later than August 1, 2011.

Your response should be consistent with the Instructions outlined in the April 25<sup>th</sup> letter to DOI. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation why full compliance is not possible. *See* Instructions, ¶7. 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. *See* Instructions, ¶8. This request is continuing in nature and applies to any newly discovered information. *See* Instructions, ¶11. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the deadline set out in the original request, shall be produced immediately upon location or discovery subsequent thereto. *Id.* 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,



Doc Hastings  
Chairman  
Natural Resources Committee



Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

MAY 11 2011

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

Dear Mr. Chairman:

This is in response to your letter of April 25, 2011, in which you requested additional documents relating to the report entitled, "Federal Moratorium on Deepwater Drilling" issued by the Office of Inspector General (OIG) for the Department of the Interior (Department).

At the time we were prepared to issue our report, officials in the Department's Office of the Solicitor advised us that they believed several of the attachments contained potentially privileged information. My office requested that the Department specify those attachments to which the claim of privilege applies. When this information was not forthcoming, we chose to release the report without the attachments. Since receiving your letter, we were notified by Deputy Solicitor Arthur Gary that six of the attachments, Attachments 12-18, "reflect or constitute predecisional and deliberative interagency communications relating to the manner in which the 30-Day Report was finalized, and thus raise important confidentiality interests of the Executive Branch." Mr. Gary has communicated this assertion to the Committee on Science, Space, and Technology and we understand he will be making the same assertion to your Committee. We also understand that Mr. Gary will be inviting your Committee to communicate with his office directly to reach a mutually agreeable accommodation. Because the claim of privilege is the Department's to assert - not the OIG's - we believe it is for the Department to resolve with the Committee.

Therefore, we are providing two copies of our report along with the 11 attachments that the Department does not assert as potentially privileged, one copy for you to share with the minority should you choose to do so. The attachments contain information that is exempt from disclosure to the public under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. We respectfully request that the Committee treat all of this information accordingly.

The attachments contain information that is exempt from disclosure to the public under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. We respectfully request that the Committee treat all of this information accordingly.

Finally we would like to clarify that while we reported that, "All Department officials interviewed *stated* that it was never their intention to imply the moratorium was peer reviewed by the experts, but rather rushed editing of the Executive Summary by DOI and the White House

resulted in this implication.”(emphasis added), we were unable to independently conclude whether the implications contained in the 30-Day Report were intentional or not.

If you have any questions, please do not hesitate to contact me, or your staff may contact Kris Kolesnik, Associate Inspector General for External Affairs, at 202-208-5745.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary L. Kendall". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary L. Kendall  
Acting Inspector General

Enclosures

DOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
JOHN J. DUNCAN, JR., TN  
LOUIE GOHMERT, TX  
ROB BISHOP, UT  
DOUG LAMBOURN, CO  
ROBERT J. WITTMAN, VA  
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TODD YOUNG  
CHIEF OF STAFF

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

EDWARD J. MARKEY, MA  
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JOHN GARAMENDI, CA  
COLEEN W. HANABUSA, HI

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JEFFREY DUNCAN  
DEMOCRATIC STAFF DIRECTOR

April 25, 2011

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1951 Constitution Avenue, NW  
Washington, DC 20240

Dear Secretary Salazar:

On July 20, 2010, we requested the Office of Inspector General to conduct an investigation into whether senior officials of the U.S. Department of the Interior (DOI), in an effort to help justify their decision to impose a 6-month moratorium on deepwater drilling in the Gulf of Mexico, misrepresented that the moratorium was reviewed and supported by a group of scientists and industry experts. In a brief 8-page report, issued on November 8, 2010, the Office of Inspector General (OIG) concluded that although the White House edited the original DOI draft Executive Summary leading to the "implication" that the moratorium recommendation had been peer reviewed by experts, the OIG's report nonetheless stated that it was not the intention of DOI officials to create that "implication." Surprisingly, the OIG's report neither attaches nor provides detailed excerpts of draft documents or communications that would allow this Committee and the public to reach an independent conclusion based on the documents versus credibility determinations - of DOI officials interviewed - that were made by the OIG.

Because the OIG's report inadequately discusses the actual documents, drafts and communications surrounding this important issue and lacks transparency overall, the Committee requests the underlying documents, drafts and communications reviewed by the OIG in reaching its conclusion and issuing its Report of Investigation - Federal Moratorium on Deepwater Drilling Case No. PI-PI-10-0562-I. Accordingly, we request the following items:

**A. Documents and Items to be Produced**

Any and all documents, referring, relating, or pertaining, directly or indirectly, to:

- a. The Executive Summary or any portion of the draft report, which was subsequently published by DOI as "Increased Safety Measures for Energy Development on the Outer Continental Shelf" on May 27, 2010;

- b. Drafts, revisions, excerpts, inserts, deletions, or other alterations or modifications of the Executive Summary or any portion of the draft report "Increased Safety Measures for Energy Development on the Outer Continental Shelf;"
- c. Witnesses or individuals interviewed or sought to be interviewed, whether formally or informally, in connection with the OIG Report of Investigation – Federal Moratorium on Deepwater Drilling, including but not limited to interview transcripts, notes, summaries, letters, or other communications;
- d. Individuals or entities including their titles and telephone and mailing contact information receiving any version, in whole or in part, of the draft report pertaining to the Increased Safety Measures for Energy Development on the Outer Continental Shelf and the dates on which draft reports were received; and
- e. A moratorium on drilling including but not limited to communications.

## **B. 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. The term "draft report" means any version, adaption, portion, version, change, variation, or iteration of the report pertaining to the moratorium (also known as the 30-day report) or safety measures for energy development on the outer continental shelf including but

not limited to any proposed, contemplated, recommended, or distributed outlines, inserts, deletions, modifications, alterations, attachments, appendices, visual aids, summaries, or synopses.

5. 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.

### **C. 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 document 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 an 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 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 each 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 recipient) 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.
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12. Send all responsive documents and records to:

Morgan Kim or Tim Charters  
Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, DC 20515

We expect a complete written response to be provided to the Committee no later than May 13, 2011.

If you perceive a problem providing the information in that timeframe, or have any questions about this request, please feel free to contact Morgan Kim or Tim Charters of the Committee staff.

Thank you in advance for your cooperation with the Committee in its review of this matter. Your continued attention to this important matter is appreciated.

Sincerely,



Doc Hastings  
Chairman  
Natural Resources Committee



Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources

DOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
JOHN J. DUNCAN, JR., TN  
LOUIE GOHMERT, TX  
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JON RUNYAN, NJ  
BILL JOHNSON, OH

TODD YOUNG  
CHIEF OF STAFF

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

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JEFFREY DUNCAN  
DEMOCRATIC STAFF DIRECTOR

April 25, 2011

Mary Kendall  
Acting Inspector General  
U.S. Department of the Interior  
1849 C Street, NW – Mail Stop 4428  
Washington, DC 20240

Dear Ms. Kendall:

On July 20, 2010, we requested the Office of Inspector General to conduct an investigation into whether senior officials of the U.S. Department of the Interior (DOI), in an effort to help justify their decision to impose a 6-month moratorium on deepwater drilling in the Gulf of Mexico, misrepresented that the moratorium was reviewed and supported by a group of scientists and industry experts. In a brief 8-page report, issued on November 8, 2010, the Office of Inspector General (OIG) concluded that although the White House edited the original DOI draft Executive Summary leading to the "implication" that the moratorium recommendation had been peer reviewed by experts, the OIG's report nonetheless stated that it was not the intention of DOI officials to create that "implication." The OIG's report neither attaches nor provides detailed excerpts of draft documents or communications that would allow this Committee and the public to reach an independent conclusion based on the documents versus credibility determinations - of DOI officials interviewed - that were made by the OIG.

Because the OIG's report inadequately discusses the actual documents, drafts and communications surrounding this important issue and lacks transparency overall, the Committee requests the underlying documents, drafts and communications reviewed by the OIG in reaching its conclusion and issuing its Report of Investigation – Federal Moratorium on Deepwater Drilling Case No. PI-PI-10-0562-I.

We request the following items:

**A. Documents and Items to be Produced**

Any and all documents, referring, relating, or pertaining, directly or indirectly, to:

- a. The Report of Investigation – Federal Moratorium on Deepwater Drilling, including but not limited to emails or other communication regarding the Executive Summary or any portion of the draft report “Increased Safety Measures for Energy Development on the Outer Continental Shelf;”
- b. Drafts, revisions, excerpts, inserts, deletions, or other alterations or modifications of the Executive Summary or any portion of the draft report “Increased Safety Measures for Energy Development on the Outer Continental Shelf;”
- c. Witnesses or individuals interviewed or sought to be interviewed, whether formally or informally, in connection with the Report of Investigation – Federal Moratorium on Deepwater Drilling, including but not limited to interview transcripts, notes, summaries, letters, or other communications;
- d. Individuals or entities including their titles and telephone and mailing contact information receiving any version, in whole or in part, of the draft report pertaining to the Increased Safety Measures for Energy Development on the Outer Continental Shelf and the dates on which draft reports were received; and
- e. A moratorium on drilling including but not limited to communications.

## **B. 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. The term "draft report" means any version, adaption, portion, version, change, variation, or iteration of the report pertaining to the moratorium (also known as the 30-day report) or safety measures for energy development on the outer continental shelf including but not limited to any proposed, contemplated, recommended, or distributed outlines, inserts, deletions, modifications, alterations, attachments, appendices, visual aids, summaries, or synopses.
5. 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.

### **C. 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 document 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 an 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 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 each Committee.
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Thank you in advance for your cooperation with the Committee in its review of this matter. Your continued attention to this important matter is appreciated.

Sincerely,



Doc Hastings  
Chairman  
Natural Resources Committee



Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources

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CAROL SHEA-PORTER, NH  
NIKI TSONGAS, MA  
FRANK KRATOVLJ, JR., MD  
PEDRO R. PIERLUISI, PR

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

July 20, 2010

DOC HASTINGS, WA  
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TODD YOUNG  
REPUBLICAN CHIEF OF STAFF

JAMES H. ZOIA  
CHIEF OF STAFF

Ms. Mary Kendall  
Acting Inspector General  
U.S. Department of the Interior  
Office of Inspector General  
1849 C Street NW - Mail Stop 4428  
Washington, D.C. 20240

Dear Inspector General Kendall,

In testimony before the House Committee on Natural Resources, Secretary Salazar agreed to cooperate with any Inspector General investigation into the changes made to the Interior Department's 30-Day Safety Report<sup>1</sup> after it had been peer-reviewed. As you know, this report, which included a recommendation for a six-month deepwater drilling moratorium on the Outer Continental Shelf, was presented to the President and the American people as having been peer-reviewed by a group of prominent engineers. Specifically, the language of the report states that "the recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering."<sup>2</sup> Following the release of the report it was discovered that this statement was patently false. The engineers have come forward to declare that the report was edited by political appointees after their review but prior to presentation to the President.

There are important questions about this incident that must be answered. Who in the Administration ignored the recommendation of scientists and made these changes? Were any laws broken? Who made the decision to misrepresent the views of the scientists? Were the changes influenced by the White House? Were the changes recommended by outside groups? Recent media reports suggest the Administration is acting on advice and recommendations made by the *Center for American Progress* including the recommendation for a moratorium on the OCS.

When testifying before the Committee, you initially asserted that the Inspector General office may not be able to investigate because the issue of the moratorium is subject to an ongoing court case. However, you later indicated that it would be possible to open an investigation. To be clear, we are not asking you to investigate the moratorium. We are asking you to investigate the changes made to the 30-Day Safety Report by political appointees that were presented to the public as a peer-reviewed scientific paper.

<sup>1</sup> Also known as the "Increased Safety Measures for Energy Development on the Outer Continental Shelf, May 27, 2010

<sup>2</sup> 30-Day Safety Report, Page 4

The Hon. Mary Kendall  
July 20, 2010  
Page 2

The decision to alter the report after the peer-review process severely undermines trust in the Department of the Interior and the federal government. In one of his early speeches, Secretary Salazar said, "I pledge to you that we will ensure the Interior Department's decisions are based on sound science and the public interest, and not on the special interests."<sup>3</sup> Clearly, the decision to establish a six-month moratorium was not based on sound science. The outside experts who cosigned the report have raised serious concerns that the imposition of the moratorium would exacerbate any safety issues associated with deepwater drilling.

Finally, during the previous Administration, the Inspector General's office had a record of aggressively investigating exactly these types of actions. In fact, you personally testified on July 31, 2007 before the Natural Resources Committee at a hearing on "The Political Influence of the Bush Administration on Agency Science and Decision-Making." During that testimony you discussed a report that when issued stated "In the end, the cloud of MacDonald's overreaching, and the actions of those who enabled and assisted her, have caused the unnecessary expenditure of hundreds of thousands of dollars to re-issue decisions and litigation costs to defend decisions that, in at least two instances, the courts found to be arbitrary and capricious."<sup>4</sup>

We expect you to hold the Obama Administration to this same standard. We strongly believe the altering of this 30-Day Safety Report is an egregious example of disregarding science and merits equal examination. This overreaching by political appointees in either the Department or the White House have caused the unnecessary expenditure of significant Department funds to re-issue decisions, has adversely impacted tens of thousands of citizens through lost wages and jobs, cost business hundreds of thousands of dollars, and incurred litigation costs to defend the moratorium that the court has found to be arbitrary and capricious.

We strongly encourage you to open an investigation into the allegations and the decisions made associated with this 30-Day Safety Report. Since the Secretary has publicly pledged his full cooperation, there is little doubt that the Inspector General's office could quickly investigate the influences and actions that resulted in the changes to the engineering safety report that was presented to the President.

We look forward to hearing from you promptly regarding your decision on this matter.

Sincerely,

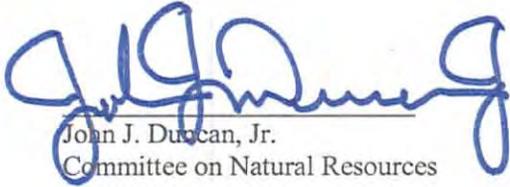
  
Doc Hastings  
Ranking Member  
Committee on Natural Resources

  
Doug Lamborn  
Ranking Member  
Subcommittee on Energy and Minerals

<sup>3</sup> Secretary of the Interior Salazar Pledges Accountability & Change In Employee Listening Session, January 22, 2009

<sup>4</sup> Report of Investigation: The Endangered Species Act and the Conflict between Science and Policy, December 15, 2008

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John J. Duncan, Jr.  
Committee on Natural Resources



Bill Cassidy  
Committee on Natural Resources



Paul Broun  
Committee on Natural Resources



Jason Chaffetz  
Committee on Natural Resources



John Fleming  
Committee on Natural Resources