

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To Hon. Ken Salazar, Secretary, Department of the Interior

You are hereby commanded to be and appear before the Committee on Natural Resources

of the House of Representatives of the United States at the place, date and time specified below.

to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____	
Date: _____	Time: _____

to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: <u>1324 Longworth House Office Building</u>	
Date: <u>May 24, 2012</u>	Time: <u>12 NOON</u>

To U.S. Marshals service or any designated staff member of the
Committee on Natural Resources to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,
at the city of Washington, this 11 day of May, 2012.

Attest: Karen P Naas
Clerk

[Signature]
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for The Honorable Ken Salazar, Secretary of the Department of the Interior
Serve: Christopher Mansour, Director of Congressional and Legislative Affairs

Address 1849 C Street NW, Washington, D.C. 20240

before the Committee on Natural Resources

U.S. House of Representatives
112th Congress

Served by (print name) Tim Dayk

Title Director, Office of Oversight & Investigation

Manner of service By Hand

Date May 11, 2012

Signature of Server _____

Address 1324 Longworth

SCHEDULE

1. All documents regarding the March 2010 settlement between the Coal River Mountain Watch, et. al., the National Parks Conservation Association, and the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior “requiring OSM to make their best efforts to sign a final action on the proposed [Stream Protection] Rule no later than Friday, June 29, 2012”; including but not limited to:
 - a. Any drafts of the settlement;
 - b. Any changes or proposed changes to the settlement;
 - c. Any discussion about the Department and/or OSM’s effort to meet the terms of the settlement;
 - d. All documents related to attorney fees paid as a result of the settlement.
2. All documents, including emails or memoranda, regarding the decision not to rely on the EIS or RIA for the 2008 Stream Buffer Zone Rule and to conduct a new EIS and RIA.
3. All documents, including emails or memoranda, regarding OSM’s costs and benefits analysis of the Stream Protection Rule.
4. All documents, including emails or memoranda, within the Department and OSM; between the Department and OSM; between the Department and/or OSM, OMB, CEQ, USACE, and White House staff; and between OSM, the Department, and any Contractors or Subcontractors regarding the baseline parameters for the EIS and the RIA, specifically but not limited to documents regarding:
 - a. The baselines and parameters that were provided to the Contractors prior to and including February 2011.
 - b. The baselines and parameters that were provided to the Contractors after February 2011.
 - c. The decision to expand the scoping opportunities for the re-write of the 2008 Stream Buffer Zone Rule.
 - d. The decision to use the 2008, 2009, or 2010 coal production numbers, or an average of the three years combined in creating assumptions for the EIS or RIA.
 - e. Whether the proposed Stream Protection Rule would cover only surface mining or surface and underground mining.
 - f. The implementation timeline of the Stream Protection Rule.
 - g. Assumptions that the 2008 Stream Buffer Zone Rule was in effect and being enforced across the United States.

5. All communications, within the Department and OSM; between the Department and OSM; between the Department and/or OSM, OMB, CEQ, USACE, and White House staff; and between OSM, the Department, and any Contractors or Subcontractors regarding the baseline parameters (including all those parameters listed above in question 4), for the EIS and the RIA, including communications to/from and between the following individuals:
 - a. John Craynon
 - b. Mary Katherine Ishee
 - c. Brent Means
 - d. Glenda Owens
 - e. Dennis Rice
 - f. Sterling Rideout
 - g. Dianne Shawley
 - h. Nancy Sloanhoffer
 - i. Stephanie Varvell
 - j. William Winters

GENERAL INSTRUCTIONS

1. In complying with this subpoena, you shall produce all responsive documents that are in your possession, custody, or control.
2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
4. Each document produced shall be produced in a form that renders the document capable of being copied.
5. When you produce documents, you shall identify the paragraph or clause in the Committee's subpoena to which the documents respond.
6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.

7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the subpoena to which the documents are responsive, shall be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
9. If any of the subpoenaed 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), you shall consult with Majority Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format shall also be produced in a *searchable* format.
10. In the event that a document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall 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.
12. If a date or other descriptive detail set forth in this subpoena 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 subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This subpoena is continuing in nature and applies to any newly-discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.
14. All documents shall be Bates-stamped sequentially and produced sequentially.
15. Two sets of documents shall be delivered to the Committee office in Room 1324 of the Longworth House Office Building. You shall consult with designated Committee staff regarding the method of delivery prior to sending any material.
16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

DEFINITIONS

1. The term “document” means any *unredacted* written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meeting or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and 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). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) 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. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. 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, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The terms “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.
7. The term “White House” refers to the Executive Office of the President and all of its units including, without limitation, the Office of Administration, the White House Office, the Office of the Vice President, the Office of Science and Technology Policy, the Office of Management and Budget, the United States Trade Representative, the Office of Public Liaison, the Office of Correspondence, the Office of the Deputy Chief of Staff for Policy and Political Affairs, the Office of the Deputy Chief of Staff for White House Operations, the Domestic Policy Council, the Office of Federal Procurement Policy, the Office of Intergovernmental Affairs, the Office of Legislative Affairs, Media Affairs, the National Economic Council, the Office of Policy Development, the Office of Political Affairs, the Office of Presidential Personnel, the Office of the Press Secretary, the Office of Scheduling and Advance, the Council of Economic Advisors, the Council on Environmental Quality, the Executive Residence, the President’s Foreign Intelligence Advisory Board, the National Security Council, the Office of National Drug Control, and the Office of Policy Development
8. The term “Committee” refers to the House Committee on Natural Resources.
9. The term “Department” refers to the United States Department of the Interior.
10. The term “OSM” refers to Office of Surface Mining Reclamation and Enforcement.
11. The term “OMB” refers to the Office of Management and Budget.
12. The term “CEQ” refers to the Council on Environmental Quality.
13. The term “USACE” refers to the United States Army Corps of Engineers.
14. The term “2008 Stream Buffer Zone Rule” refers to 30 CFR parts 780, 784, et al.
15. The term “Stream Protection Rule” refers to 30 CFR parts 780, 784, 816, and 817, and 74 Fed. Reg. 228.
16. The term “EIS” refers to any preliminary drafts of the Environmental Impact Statement related to the rewrite of the 2008 Stream Buffer Zone Rule and/or Stream Protection Rule.

17. The term “RIA” refers to any preliminary drafts of the Regulatory Impact Assessment related to the rewrite of the 2008 Stream Buffer Zone Rule and/or Stream Protection Rule.
18. The terms “Contractors” and/or “Subcontractors” refers to all contractors that were used to review, draft, and analyze the existing law including all rules, the 2008 Stream Buffer Rule, and all proposal for the Stream Protection Rule including but not limited to Polu Kai Services, ECSI, Morgan Worldwide, Plexus, MACTEC (now AMEC), Industrial Economics Inc., and Energy Ventures Analysis.