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

July 10, 2012

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The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
Mail Stop 6242
1849 C Street, N.W.
Washington, D.C. 20240

The Honorable Joseph Pizarchik
Director
Office of Surface Mining Reclamation and Enforcement
1951 Constitution Avenue N.W., South Interior
Washington, D.C. 20240

Dear Secretary Salazar and Director Pizarchik:

The Committee will hold an oversight hearing on July 19, 2012 to examine 1) the status of the proposed Stream Protection Rule rewrite and the lawsuit settlement agreement entered into on March 19, 2010 by the Department of the Interior ("Department") and the Office of Surface Mining Reclamation and Enforcement ("OSM") to complete the rewrite of the rule by last month; and 2) the failure of the Department to comply with the official Congressional subpoenas for documents on this proposed new coal production regulation, which is calculated to cause thousands of lost jobs and economic harm to over twenty states. This letter serves as an official invitation to provide testimony and answer questions at this hearing.

In February 2011, more than 16 months ago, you received the first in a series of letters asking for information and documentation that would explain some of the troubling decisions that have come from the Department and OSM concerning the rewrite of this coal production regulation. Based upon the statements of the President, Vice President and other senior officials, it is clear that this Administration is committed to pursuing an agenda to reduce or prohibit coal production in our nation by implementing new costly regulations through a myriad of federal agencies, from the OSM to the Environmental Protection Agency ("EPA"). The certain loss of thousands of good-paying jobs and skyrocketing power prices from the loss of this low-cost energy source has not slowed the Administration's efforts. However, the actions of the

Department to simply toss aside the legitimate, thorough, and recently-completed 2008 Stream Buffer Zone Rule (“Rule”) is particularly alarming.

The Rule was published in December 2008, and set to be effective January 12, 2009. Notably, it was published with the concurrence of the EPA, after a process that took five years of study and scientific evaluations, and at a cost of millions of taxpayer dollars. Almost immediately after the Rule was formally in place and the Obama Administration took office, the Department went on record as having “decided to change the rule” with the arrival of the new Administration. The first attempt to change the Rule came when the Department asked a Federal Court to vacate it, ignoring the millions of taxpayer dollars spent in its promulgation and defying the requirements of the Administrative Procedure Act. When the Court admonished this first attempt to circumvent established rulemaking procedures, the Department entered into a lawsuit settlement agreement with special interest groups to rush through a new rulemaking on a hastened and impractical time frame.

As you know, as part of the lawsuit settlement agreement entered into in March 2010, OSM and the Department committed to sign a proposed Stream Protection Rule by February 28, 2011 and sign a final action by June 29, 2012.¹ This self-imposed rushed timeframe required a sweeping rewrite of coal regulations to be substantially completed in just a year. When this rushed process inevitably led to significant concerns from affected states about the integrity of the process, and later, to considerable questions about the data used in draft environmental impact statement and regulatory impact analysis, the Committee began an investigation into this rulemaking process. The investigation was initiated to gain a clear understanding of how and why this extensive rewrite was initiated and was to be completed on such a hastened schedule; how the rulemaking itself is being managed, including whether appropriate procedures are being followed; the cost of the rulemaking; and whether the political implications of the rule are unduly influencing the process.

Over the last year and a half, the Department failed to meet even one deadline to any document request. After more than a year of avoiding questions, and refusing to provide requested documentation, the Committee authorized the issuance of subpoenas for the production of documents. Two subpoenas have been served on the Department seeking a range of documents that have been withheld. To date, these subpoenas have not been complied with, only small document productions consisting of significantly redacted information have been sent on the eve of deadlines under a claim of “good-faith efforts to respond” to the subpoenas and protestations of “thousands” of pages of documents produced. As has been repeatedly explained, compliance with Congressional oversight is not judged by the volume of pages submitted, but by producing all required documents and openly, honestly, and completely answering legitimate questions.

Absent a valid assertion of a Constitutionally based privilege, the Department’s continuing refusal to provide certain requested documents violates the subpoenas and frustrates Congress’ ability to fulfill its Constitutional oversight responsibilities. The Department continues to assert only vague claims of confidentiality concerns, and to claim that the

¹ Although these deadlines were agreed to by the Administration, both deadlines have been missed. No proposed rule has been issued and no final rule has been signed.

information requested is protected by a deliberative process exemption incorporated into FOIA [exemption 5, 5 U.S.C. § 552(b)(5).] The Committee has been clear that these are not valid claims to refuse to comply with Congressional oversight and official Congressional subpoenas *duces tecum*. This lack of candor and transparency is extremely disappointing considering the Administration's promise of an "unprecedented level of openness in Government."

Importantly, while the Department has largely stonewalled this Congressional investigation, it remains unclear why this rewrite was initiated to begin with, how the rulemaking process is being managed and, significantly, how the Department and OSM are managing and enforcing existing regulations during this time of uncertainty. What is clear is that the 2008 Rule has been cast aside by this Administration, no replacement rule has been completed, and the Department and OSM continue to hide behind claims of secrecy surrounding "ongoing rulemaking" even though the Administration entered into a settlement agreement before a Federal Court to have a new completed, final coal production rule in place by last month.

In the continuing effort to achieve compliance and to seek answers and clarity on the Administration's actions, the Committee will hold the above mentioned oversight hearing to hear directly from the Department. Questions should be expected on the Department's refusal to comply with the two subpoenas for documents, the current status of the rulemaking, and the Department's failure to abide by its voluntary court settlement agreement to complete the rule rewrite by the end of last month. The hearing will begin at 10 a.m. on Thursday, July 19, 2012 at 1324 Longworth House Office Building.

Enclosed with this letter are the parameters regarding written and oral testimony. Should you have any questions or need additional information, please have your staff contact the Committee at 202-225-2761.

Sincerely,

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

Doc Hastings
Chairman