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

February 22, 2013

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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

Dear Secretary Salazar:

Two years ago you received the first in a series of letters asking for information and documents that would explain the deeply concerning decisions made by the Department and the Office of Surface Mining (“OSM”) over the last few years related to the decision to discard nearly 5 years of rulemaking and begin a rewrite of Stream Buffer Zone Rule. The Committee has raised several questions and asked for specific documents related to the Department’s concluded decision to casually toss aside a rule that took five years of study and scientific analysis to draft, rush to draft a replacement rule that would destroy 7,000 jobs, impact 22 states and fall disproportionately on small businesses, only to come to an apparent stand-still when the ineffectual and disastrous nature of the new rule was brought to light. Over the last two years, this Committee has sent 9 letters¹ to the Department and not a single deadline has been met. In April and May of 2012, the Department received two subpoenas for the production of documents. Not one single line item in either subpoena has been complied with.

The Department has continuously either failed to respond or responded inadequately to the Committee’s attempts to obtain complete and reliable information about this process since the initiation of the investigation, and some material has simply been withheld for nearly two years without any valid reason. When the Department did provide documents, the documents have not been responsive to the requests, or were so heavily redacted as to be without value for the Committee’s oversight responsibilities. In many instances, the redactions were totally arbitrary and items redacted in one version of a document were not redacted in a second version

¹ February 8, 2011; February 10, 2011; April 1, 2011; July 18, 2011; August 15, 2011; September 28, 2011; October 13, 2011; January 25, 2012; and May 11, 2012.

– often in the same document production. The Department has continually refused to provide copies of audio recordings the Department has in its possession, a detailed economic impact or job loss analysis of their preferred alternatives to the Stream Buffer Zone Rule, or a privilege log or any accounting of how many documents have been collected, and how many have been withheld by the Department.

In March 2010, more than two and a half years ago, the Department entered into a settlement agreement committing the Department to make best efforts to publish a final rule by June 29, 2012. The Department has refused to provide answers about why the Stream Buffer Zone Rule was tossed aside, why they entered into a settlement agreement with special interest groups to create a new rule on a hastened timeframe, or why, two years and nearly eight million dollars later, there is no proposal, draft rule or final rule.² Not only has the Department failed to provide a basis for tossing aside the Stream Buffer Zone Rule, seven months have passed since that final deadline and still, no rule has been proposed and the Department has failed to update to Congress on the status of the ongoing rulemaking effort.

The Department has been asked repeatedly, both in writing and during hearings, to provide information to Congress about the status of this rulemaking. However, at every turn the Department has thwarted Congress's attempt to conduct meaningful oversight and provide even basic information about this rulemaking process, and the timeline under which the Department is operating. Director Pizarchik testified on July 19, 2012 that OSM had "a status conference with [the litigants] to apprise them of the fact that [they] had missed the deadline and some of the explanation as to why," and that "the court has asked for a status report from the parties in the litigation." After repeated requests for status updates, the Department has continuously failed to provide the Committee with a timeline of when the Administration's replacement for the Stream Buffer Zone Rule will be proposed, what the status of the settlement is, and what information has been provided to the litigants or the Court.

The Plaintiffs in the case have now indicated that they intend to move the Court to lift the stay of this case on February 25, 2013, which will require the Administration to spend additional time in court litigating their failed handling of this rulemaking rather than conducting thoughtful analysis of the best way to promote energy production and strengthen the economy. With the lawsuits being renewed by the environmental organizations, pressuring the Department to rush through an already bizarre rulemaking process, it is now more important than ever that the Department disclose all documents and information the Committee has sought for two years regarding President Obama's decision to discard a science based coal production rule and implement a new, job destroying regulation.

² Testimony of Director Pizarchik, Oversight hearing "Status of Obama Administration's Rewrite of the Stream Buffer Zone Rule and Compliance with Committee Subpoenas" Thursday, July 19, 2012.

As we start our third year of this process, we would ask that you promptly provide an update on the progress of the Stream Protection Rule, including the following information by March 8, 2013:

1. What is the status of OSM's work on the Stream Protection Rule?
 - a. Is the Environmental Impact Statement for the Stream Protection Rule completed?
 - b. Is the Regulatory Impact Analysis for the Stream Protection Rule completed?
 - c. When does OSM anticipate proposing the Stream Protection Rule?
2. How much money has been spent to date on this rulemaking effort?
3. How many staff are currently assigned to this rulemaking effort full time?
4. How many staff were assigned to this rulemaking effort between January 1, 2009 and December 31, 2012?
5. Any and all communication between the Department of the Interior and any of the following organizations between December 1, 2008 and present: National Parks Conservation Association, Coal River Mountain Watch, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, Waterkeeper Alliance, and West Virginia Highlands Conservancy.
6. Copies of any and all contracts, agreement, or scope of work documents related to the Environmental Impact Statement or Regulatory Impact Analysis of the Stream Protection Rule, including any contracts with third-party contractors or subcontractors contracted to work on the Rule.

Sincerely,



Doc Hastings
Chairman