

*Documents responsive to the request from Chairman Hastings for documents related to the Office of Surface Mining Stream Protect Rulemaking*

**Volume: 00027094\_Hastings\_006**

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**AGREEMENT TO SETTLE CASES SEEKING JUDICIAL REVIEW OF  
THE 2008 STREAM BUFFER ZONE RULE**

WHEREAS, on December 12, 2008, the Office of Surface Mining Reclamation and Enforcement (“OSM”) of the United States Department of the Interior (“DOI”) promulgated a final rule entitled “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams” (“the 2008 SBZ Rule”) 73 Fed. Reg. 75,814;

WHEREAS, on December 22, 2008, a complaint seeking judicial review of the 2008 SBZ Rule was filed in the U.S. District Court of the District of Columbia by 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 (collectively, the “Coal River Plaintiffs”), under the case caption Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212;

WHEREAS, the Coal River Plaintiffs allege that OSM’s promulgation of the 2008 SBZ Rule violated the Surface Mining Control and Reclamation Act (“SMCRA”), 33 U.S.C. § 1265, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, and that OSM’s final environmental impact statement for the rule violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4332. The Coal River Plaintiffs further allege that the United States Environmental Protection Agency’s (“EPA’s”) concurrence in the rule pursuant to section 501 of SMCRA, 33 U.S.C. § 1251, violated the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., and the APA;

WHEREAS, on January 16, 2009, the National Parks Conservation Association (“NPCA”) filed a separate complaint in the U.S. District Court for the District of Columbia seeking judicial review of the 2008 SBZ Rule under the case caption NPCA v. Kempthorne et

al. Case No. 1:09-cv-00115, which NPCA amended on February 13, 2009. NPCA's Amended Complaint alleges that OSM's promulgation of the 2008 SBZ Rule violated SMCRA, section 7(a)(2) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2), and the APA; and further alleges that EPA's concurrence in the 2008 SBZ Rule violated section 7(a)(2) of the ESA, the Clean Water Act and its implementing regulations;

WHEREAS, both complaints seek, inter alia, vacatur of the 2008 SBZ Rule and reasonable costs of litigation including attorney's fees;

WHEREAS, the complaints collectively name the Secretary of the Interior, the Director of OSM, and the EPA Administrator as defendants (collectively, "the Federal Defendants"). The National Mining Association has also intervened in both cases as a defendant;

WHEREAS, the Federal Defendants have not answered either complaint;

WHEREAS, on April 24, 2009, the Federal Defendants moved in the NPCA case for a voluntary remand and vacatur of the 2008 SBZ Rule on the grounds that the Secretary of the Interior had determined OSM erred by failing to initiate consultation pursuant to the ESA in connection with 2008 SBZ rulemaking, as alleged in NPCA's Amended Complaint. The Court denied this motion in a Memorandum Opinion and Order dated August 12, 2009, holding that vacatur of the rule without public notice and comment would, under the circumstances, violate the APA;

WHEREAS, OSM now plans to conduct a notice and comment rulemaking under SMCRA to establish a new rule to amend or replace the 2008 SBZ Rule, including a new environmental impact statement, under the schedule set forth below;

WHEREAS, OSM published in the *Federal Register* an Advance Notice of Proposed Rulemaking, for which it requested public comment by December 30, 2009, and intends to use best efforts to sign a proposed rule by February 2011; and

WHEREAS, in light of OSM's intentions, the Coal River Plaintiffs, NPCA and the Federal Defendants (collectively the "Settling Parties") wish to resolve this matter without any further litigation;

NOW, THEREFORE, the Settling Parties, each intending to be bound by this Agreement, hereby agree as follows:

1. OSM shall make best efforts to sign no later than Monday, February 28, 2011, a proposed rule to amend or replace the 2008 SBZ Rule, which it shall promptly thereafter submit for publication in the *Federal Register*.

2. OSM shall make best efforts to sign a final action on the proposed rule described in Paragraph 1 no later than Friday, June 29, 2012, which it shall promptly thereafter submit for publication in the *Federal Register*.

3. In connection with the rulemaking described in Paragraphs 1 and 2, OSM shall consult pursuant to the ESA as appropriate prior to signing the final action.

4. No later than March 19, 2010, the Federal Defendants and the Plaintiffs will file joint motions for stay of the pending complaints in Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212, and NPCA v. Kempthorne et al., Case No. 1:09-cv-00115, pending completion of, and subject to, the terms of this agreement. If OSM fails to sign the proposed rule referred to in Paragraph 1 by February 28, 2011, or fails to sign a final action on that proposed rule by June 29, 2012, the sole remedy under this agreement shall be to ask the Court to lift the stay and establish a schedule for further proceedings. Plaintiffs must give Federal Defendants 30 days notice before requesting that the stay be lifted. The Coal River Plaintiffs and NPCA each agree that they shall not seek lifting the stay under any other circumstance.

5. Within 30 days of OSM's completion of the actions specified in Paragraph 1 and Paragraph 2 above, Plaintiffs shall dismiss their complaints with prejudice. The Settling Parties agree that, for purposes of determining preclusive effect, such dismissal shall apply only to the claims raised in the complaints specifically challenging the 2008 SBZ Rule and EPA's concurrence therein. All other claims and defenses are specifically reserved as set forth in Paragraph 10 below.

6. Under no circumstance shall any provision of this Agreement be the basis for any action for specific performance, mandamus, or any other remedy seeking to compel OSM, or any other department, agency or instrumentality of the United States, to take any of the actions described in Paragraphs 1, 2 and 3.

7. The Federal Defendants agree that an award of Plaintiffs' reasonable costs of litigation, incurred through March 19, 2010 (the Effective Date of this Agreement), including attorney's fees, is appropriate in light of this settlement agreement, and agree to pay a reasonable amount of such fees and costs to the Coal River Plaintiffs and NPCA pursuant to the ESA, 16 U.S.C. § 1540 (g), SMCRA, 30 U.S.C. § 1270(d), and/or the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. All parties reserve their rights and defenses for any fees and costs incurred after the Effective Date. The Settling Parties agree to attempt in good faith to resolve Plaintiffs' claims for fees and costs expeditiously and without the need for Court intervention, and to that end, the Plaintiffs will submit to the Federal Defendants any claim for fees and costs incurred by the Effective Date at a time sufficient to allow good faith negotiations regarding, and resolution of, that claim before dismissal of the lawsuits. Notwithstanding dismissal of the complaints pursuant to Paragraph 5, the Court shall retain jurisdiction over each complaint for the purpose of resolving any dispute regarding Plaintiffs' claims for an award of fees and costs under the ESA or SMCRA. If either the Coal River Plaintiffs or NPCA is unable to agree with

the Federal Defendants on a reasonable amount of fees and costs incurred through March 19, 2010 under the ESA, SMCRA, and/or EAJA, an application to the Court seeking an award of such fees and costs shall be filed no earlier than 30 days, and no later than 60 days, after the Effective Date of this Agreement. By this Agreement, the Federal Defendants do not waive any right to contest fees or costs claimed by Plaintiffs, including but not limited to the claimed hourly rate, in any continuation of the present action or any future litigation.

8. The Effective Date of this Agreement shall be the date on which representatives of all of the Settling Parties have signed the Agreement.

9. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to OSM, DOI, or EPA under SMCRA, the ESA, NEPA, the CWA, or any other applicable law or regulation.

10. Except as set forth in this Agreement, each Settling Party retains any and all rights, claims or defenses it may otherwise have.

11. This Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the Federal Defendants, their officers, or any person affiliated with them.

12. The commitments of the Federal Defendants in this Settlement Agreement are subject to the availability of appropriated funds applicable for those purposes. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that any department, agency or instrumentality of the United States of America obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341-44 and 1511-19, or any other applicable provision of law.

13. Any term set forth in this Agreement may be modified by written agreement of the Settling Parties.

14. Nothing in this Agreement shall bind, obligate, or otherwise create any rights or duties applicable to or enforceable by, or impose any conditions or limitations upon, any person or entity that has not signed the Agreement, nor shall the Agreement be construed to make any such person or entity a third-party beneficiary of the Agreement.

15. Any notices required or provided for by this Agreement shall be made in writing, via facsimile, electronic mail, or other means, and sent to the following:

**For the Coal River Plaintiffs:**

JENNIFER C. CHAVEZ  
Earthjustice  
1625 Massachusetts Avenue, NW, Suite 702  
Washington, D.C. 20036  
Telephone: (202) 667-4500  
Facsimile: (202) 667-2356  
E-mail: [jchavez@earthjustice.org](mailto:jchavez@earthjustice.org)

JOSEPH M. LOVETT  
Appalachian Citizens Law Center  
P.O. Box 507  
Lewisburg, WV 24901

AARON ISHERWOOD  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105

STEVE SANDERS  
MARY CROMER  
Appalachian Citizens Law Center  
52 Broadway, Suite B  
Whitesburg, KY 41858

SCOTT EDWARDS  
Waterkeeper Alliance  
50 S. Buckhout Suite 302  
Irvington, NY 10533

**For NPCA:**

DEBORAH M. MURRAY  
Southern Environmental Law Center  
201 West Main Street, Suite 14

Charlottesville, VA 22902  
Telephone: (434) 977-4090  
Facsimile: (434) 977-1483  
E-mail: [dmurray@selcva.org](mailto:dmurray@selcva.org)

**For the Federal Defendants:**

BRIAN H. LYNK  
Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
Alternate address for non-U.S. Postal Service deliveries:  
601 D Street, NW, Suite 8000  
Washington, D.C. 20004

RUTH ANN STOREY  
Trial Attorney  
Natural Resources Section  
United States Department of Justice  
P.O. Box 663  
Washington, D.C. 20044-0663  
Telephone: (202) 305-0493  
Facsimile: (202) 514-8865  
E-mail: [ruth.ann.storey@usdoj.gov](mailto:ruth.ann.storey@usdoj.gov)

Alternate address for non-U.S. Postal Service deliveries:  
601 D Street, NW, 3<sup>rd</sup> Floor  
Washington, D.C. 20004

MARK ARTHUR BROWN  
Senior Trial Attorney  
Wildlife & Marine Resources Section  
United States Department of Justice  
P.O. Box 7369  
Washington, D.C. 20044-7369  
Telephone: (202) 305-0204  
Facsimile: (202) 305-0275  
E-mail: [mark.brown@usdoj.gov](mailto:mark.brown@usdoj.gov)

Alternate address for non-U.S. Postal Service deliveries:  
601 D Street, NW, Room 3036  
Washington, D.C. 20004

16. This Agreement may be executed in any number of original counterparts, each of which shall be deemed to constitute one agreement. The execution of one counterpart by any Settling Party shall have the same force and effect as if that Settling Party had signed all other counterparts.

17. This Agreement constitutes the entire Agreement of the Settling Parties with respect to the subject matter addressed herein. There are no warranties or representations, oral or written, relating to the subject matter hereof that are not fully expressed or provided for herein.

18. The undersigned representatives of each Settling Party certify that they are fully authorized by the Settling Party that they represent to bind that Settling Party to the terms of this Agreement.

**For the Coal River Plaintiffs:**

---

JENNIFER C. CHAVEZ  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, D.C. 20036  
Telephone: (202) 667-4500  
Facsimile: (202) 667-2356  
E-mail: [jchavez@earthjustice.org](mailto:jchavez@earthjustice.org)  
*Counsel for Plaintiffs West Virginia  
Highlands Conservancy, Coal River  
Mountain Watch, and Ohio Valley  
Environmental Coalition*

Dated:

---

JOSEPH M. LOVETT  
Appalachian Citizens Law Center  
P.O. Box 507  
Lewisburg, WV 24901  
*Counsel for Plaintiffs Sierra Club,  
West Virginia Highlands Conservancy,  
Southern Appalachian Mountain  
Stewards, and Kentucky Waterways  
Alliance*

Dated:

---

AARON ISHERWOOD  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
*Counsel for Plaintiffs Sierra Club and  
Southern Appalachian Mountain  
Stewards*

Dated:

**For NPCA:**

---

DEBORAH M. MURRAY  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902  
Telephone: (434) 977-4090  
Facsimile: (434) 977-1483  
E-mail: [dmurray@selcva.org](mailto:dmurray@selcva.org)  
*Counsel for Plaintiff National Parks  
Conservation Association*

Dated:

**For the Federal Defendants:**

IGNACIA MORENO  
Assistant Attorney General  
Environment and Natural Resources  
Division

By:



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BRIAN H. LYNK, Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
*Counsel for the Federal Defendants*

Dated:

March 19, 2010

**For the Coal River Plaintiffs:**

---

JENNIFER C. CHAVEZ  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, D.C. 20036  
Telephone: (202) 667-4500  
Facsimile: (202) 667-2356  
E-mail: [jchavez@earthjustice.org](mailto:jchavez@earthjustice.org)  
*Counsel for Plaintiffs West Virginia  
Highlands Conservancy, Coal River  
Mountain Watch, and Ohio Valley  
Environmental Coalition*

Dated:

---

JOSEPH M. LOVETT  
Appalachian Citizens Law Center  
P.O. Box 507  
Lewisburg, WV 24901  
*Counsel for Plaintiffs Sierra Club,  
West Virginia Highlands Conservancy,  
Southern Appalachian Mountain  
Stewards, and Kentucky Waterways  
Alliance*

Dated:

---

AARON ISHERWOOD  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
*Counsel for Plaintiffs Sierra Club and  
Southern Appalachian Mountain  
Stewards*

Dated:

**For NPCA:**

*Deborah Murray*  
DEBORAH M. MURRAY  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902  
Telephone: (434) 977-4090  
Facsimile: (434) 977-1483  
E-mail: [dmurray@selcva.org](mailto:dmurray@selcva.org)  
*Counsel for Plaintiff National Parks  
Conservation Association*

Dated: 19 March 2010

**For the Federal Defendants:**

IGNACIA MORENO  
Assistant Attorney General  
Environment and Natural Resources  
Division

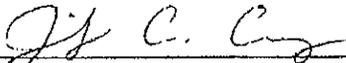
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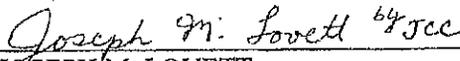
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P.O. Box 23986  
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Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
*Counsel for the Federal Defendants*

Dated:

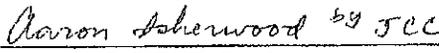
**For the Coal River Plaintiffs:**

  
JENNIFER C. CHAVEZ  
Earthjustice  
1625 Massachusetts Avenue, NW  
Suite 702  
Washington, D.C. 20036  
Telephone: (202) 667-4500  
Facsimile: (202) 667-2356  
E-mail: [jchavez@earthjustice.org](mailto:jchavez@earthjustice.org)  
*Counsel for Plaintiffs West Virginia  
Highlands Conservancy, Coal River  
Mountain Watch, and Ohio Valley  
Environmental Coalition*

Dated: 3-19-2010

  
JOSEPH M. LOVETT  
Appalachian Citizens Law Center  
P.O. Box 507  
Lewisburg, WV 24901  
*Counsel for Plaintiffs Sierra Club,  
West Virginia Highlands Conservancy,  
Southern Appalachian Mountain  
Stewards, and Kentucky Waterways  
Alliance*

Dated: 3-19-2010

  
AARON ISHERWOOD  
85 Second Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
*Counsel for Plaintiffs Sierra Club and  
Southern Appalachian Mountain  
Stewards*

Dated: 3-19-2010

**For NPCA:**

DEBORAH M. MURRAY  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902  
Telephone: (434) 977-4090  
Facsimile: (434) 977-1483  
E-mail: [dmurray@selcva.org](mailto:dmurray@selcva.org)  
*Counsel for Plaintiff National Parks  
Conservation Association*

Dated:

**For the Federal Defendants:**

IGNACIA MORENO  
Assistant Attorney General  
Environment and Natural Resources  
Division

By:

BRIAN H. LYNK, Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
*Counsel for the Federal Defendants*

Dated:

**For the Coal River Plaintiffs (continued):**

Mary Cromer by JCC

STEVE SANDERS  
MARY CROMER  
Appalachian Citizens Law Center  
52 Broadway, Suite B  
Whitesburg, KY 41858  
*Counsel for Plaintiff Save Our  
Cumberland Mountains*

Dated: 3-19-2010

Scott Edwards by JCC

SCOTT EDWARDS  
Waterkeeper Alliance  
50 S. Buckhout Suite 302  
Irvington, NY 10533  
*Counsel for Plaintiff Waterkeeper  
Alliance*

Dated: 3-19-2010

## SETTLEMENT AGREEMENT REGARDING COSTS OF LITIGATION

This Settlement Agreement (“Agreement”) is made between Plaintiff National Parks Conservation Association (“NPCA”) and the United States of America, on behalf of Defendants Ken Salazar, Secretary of the Interior, Joseph Pizarchik, Director of the Office of Surface Mining Reclamation and Enforcement (“OSM”), and Lisa P. Jackson, Administrator of the United States Environmental Protection Agency (collectively, “the United States”).

WHEREAS, on January 16, 2009, NPCA filed a complaint, which it later amended on February 13, 2009, in the United States District Court for the District of Columbia under the case caption NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115, seeking judicial review of a final rule entitled “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams” (the 2008 SBZ Rule”), 73 Fed. Reg. 75,814 (Dec. 12, 2008);

WHEREAS, NPCA’s complaint alleged violations of section 7(a)(2) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2), as well as other statutes, including a claim that OSM violated the ESA by failing to initiate formal consultation under section 7(a)(2) of the ESA in connection with the 2008 SBZ Rule. See NPCA Amended Complaint Count II;

WHEREAS, Defendants subsequently filed a motion for voluntary vacatur and remand acknowledging a failure to initiate consultation under the ESA in connection with the 2008 SBZ Rule, and the Court denied the motion;

WHEREAS, on March 19, 2010, NPCA, the United States, and the plaintiffs in a separate action entitled Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212 (D.D.C.), collectively entered into an agreement (the “March 19, 2010 Settlement Agreement”) which settled both the NPCA complaint and the Coal River complaint, but did not resolve what

amount of reasonable costs of litigation, including attorney's fees, would be paid either to NPCA or to the Coal River Plaintiffs;

WHEREAS, section 11(g)(4) of the ESA, 16 U.S.C. § 1540(g)(4), authorizes the Court, "in issuing any final order in any suit brought pursuant to" 16 U.S.C. § 1540(g)(1), to "award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate"; and

WHEREAS, NPCA and the United States (collectively "the Parties") wish to settle all of NPCA's potential claims for costs of litigation, including reasonable attorneys' fees, incurred through the Effective Date of this Agreement in connection with the case originally captioned NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115, in order to avoid unnecessary litigation and without any admission of law or fact;

NOW, THEREFORE, and in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Pursuant to 16 U.S.C. § 1540(g)(4), the United States agrees to pay, and NPCA agrees to accept, the sum of \$48,142.40 as a full settlement of all potential claims by NPCA for its costs of litigation, including reasonable attorneys' fees, incurred through the Effective Date of this Agreement in connection with the case originally captioned NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115. Said payment shall be made by electronic funds transfer to an account to be designated by NPCA.

2. If the United States makes the payment specified in Paragraph 1 within 90 days following the Effective Date of this Agreement, or if NPCA accepts such payment at any time thereafter, then such payment or acceptance constitutes full and final payment of all costs and fees incurred by NPCA in connection with the case originally captioned NPCA v. Kempthorne,

et al., Case No. 1:09-cv-00115, for the period up to and including the Effective Date of this Agreement. Upon such payment or acceptance, NPCA shall release the United States, including the three named Defendants and all other departments, agencies and instrumentalities of the United States and their officers and employees, from any and all claims pursuant to section 11(g)(4) of the ESA, 16 U.S.C. § 1540(g)(4), or any other applicable provision or statute, regarding the above-mentioned costs of litigation (including attorneys' fees).

3. In the event the United States fails make a payment as specified in Paragraph 1 of this Agreement within 90 days following the Effective Date of this Agreement, then NPCA reserves the right to make application to the Court for an award of costs of litigation (including attorneys' fees) incurred in connection with the case originally captioned NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115, without regard to the amount of the payment specified in Paragraph 1. Such application shall be NPCA's sole remedy for any failure by the United States to make timely payment under this Agreement. The United States agrees that it shall not oppose such application on the ground that it is untimely as a consequence of Section 7 of the March 19, 2010 Settlement Agreement, but otherwise reserves its rights to oppose such application.

4. The Effective Date of this Agreement shall be the date on which it has been signed by both NPCA and the United States. This Agreement may be executed in any number of original counterparts, each of which shall be deemed to constitute one Agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

5. Notwithstanding any other provision of this Agreement, payments by the United States are subject to the availability of appropriated funds in accordance with the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1511-19. No provision of this Agreement shall be

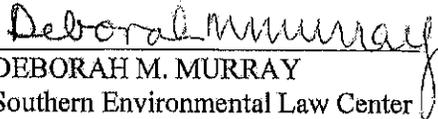
interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of said Anti-Deficiency Act or any other applicable provision of law.

6. The undersigned representatives of each Party certify that they have been duly authorized by the Party they represent to enter into this Agreement.

SO AGREED:

For NPCA:

Date: 18 May 2010

  
DEBORAH M. MURRAY  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902  
Telephone: (434) 977-4090  
Facsimile: (434) 977-1483  
E-mail: [dmurray@selcva.org](mailto:dmurray@selcva.org)  
*Counsel for Plaintiff National Parks  
Conservation Association*

**For the United States:**

IGNACIA MORENO  
Assistant Attorney General  
Environment & Natural Resources Division

Date: \_\_\_\_\_

By: \_\_\_\_\_

BRIAN H. LYNK, Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
*Counsel for the United States*

## SETTLEMENT AGREEMENT REGARDING COSTS OF LITIGATION

This Settlement Agreement (“Agreement”) is made between Plaintiffs Coal River Mountain Watch, Kentucky Waterways Alliance, Ohio Valley Environmental Coalition, Save Our Cumberland Mountains, Sierra Club, Southern Appalachian Mountain Stewards, Waterkeeper Alliance, West Virginia Highlands Conservancy (collectively, “Plaintiffs” or “Coal River Plaintiffs”), and the United States of America, on behalf of Defendants Ken Salazar, Secretary of the Interior, and Lisa P. Jackson, Administrator of the United States Environmental Protection Agency (collectively, “the United States”).

WHEREAS, on December 22, 2008, Plaintiffs filed a complaint in the United States District Court for the District of Columbia under the case caption Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212, seeking judicial review of a final rule entitled “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams” (the 2008 SBZ Rule”), 73 Fed. Reg. 75,814 (Dec. 12, 2008). The plaintiffs in a separate action entitled National Parks Conservation Association (“NPCA”) v. Kempthorne, et al., Case No. 1:09-cv-00115 (D.D.C.) also sought judicial review of this rule;

WHEREAS, Defendants subsequently filed a motion for voluntary vacatur and remand acknowledging a failure to initiate consultation under the Endangered Species Act in connection with the 2008 SBZ Rule, and the Court denied the motion;

WHEREAS, on March 19, 2010, the Coal River Plaintiffs, NPCA, and the United States collectively entered into an agreement (the “March 19, 2010 Settlement Agreement”) which settled both the Coal River complaint and the NPCA complaint, but did not resolve what amount of reasonable costs of litigation, including attorney’s fees, would be paid either to the Coal River Plaintiffs or to NPCA; and

WHEREAS, the Coal River Plaintiffs and the United States (collectively "the Parties") wish to settle all of Plaintiffs' potential claims for costs of litigation, including reasonable attorneys' fees, incurred through the Effective Date of this Agreement in connection with the case originally captioned Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212, in order to avoid unnecessary litigation, and without any admission of law or fact;

NOW, THEREFORE, and in consideration of the mutual promises contained herein, the Parties agree as follows:

1. The Department of the Interior agrees to pay, and Plaintiffs agree to accept, the sum of \$12,840 as a full settlement of all potential claims by Plaintiffs for their costs of litigation, including reasonable attorneys' fees, incurred through the Effective Date of this Agreement in connection with the case originally captioned Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212. Said payment shall be made by electronic funds transfer to the following account.

Name of Account: Earthjustice Attorney Client Trust Fund  
Bank Name: Mechanics Bank  
Bank Address: P.O. Box 1786, Richmond, CA 94802-0786  
ABA/Routing #: 121102036  
Account #: 040882578  
Type of Account: Checking  
Federal Taxpayer Identification No.: 94-1730465

2. If the Department of the Interior makes the payment specified in Paragraph 1 within 90 days following the Effective Date of this Agreement, or if Plaintiffs accept such payment at any time thereafter, then such payment or acceptance constitutes full and final payment of all costs and fees incurred by Plaintiffs in connection with the case originally captioned Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212, for

the period up to and including the Effective Date of this Agreement. Upon such payment or acceptance, Plaintiffs release the United States, including the two named Defendants and all other departments, agencies and instrumentalities of the United States and their officers and employees, from any and all claims pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable provision or statute, regarding the above-mentioned costs of litigation (including attorneys' fees).

3. In the event the Department of the Interior fails to make a payment as specified in Paragraph 1 of this Agreement within 90 days following the Effective Date of this Agreement, then Plaintiffs reserve the right to make application to the Court for an award of costs of litigation (including attorneys' fees) incurred in connection with the case originally captioned Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212, without regard to the amount of the payment specified in Paragraph 1. Such application shall be Plaintiffs' sole remedy for any failure by the Department of the Interior to make timely payment under this Agreement. The United States agrees that it shall not oppose such application on the ground that it is untimely as a consequence of Paragraph 7 of the March 19, 2010 Settlement Agreement, but otherwise reserves its rights to oppose such application.

4. The Effective Date of this Agreement shall be the date on which it has been signed by both Plaintiffs and the United States. This Agreement may be executed in any number of original counterparts, each of which shall be deemed to constitute one Agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

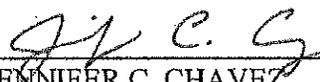
5. Notwithstanding any other provision of this Agreement, payments by the United States are subject to the availability of appropriated funds in accordance with the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1511-19. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of said Anti-Deficiency Act or any other applicable provision of law.

6. The undersigned representatives of each Party certify that they have been duly authorized by the Party they represent to enter into this Agreement.

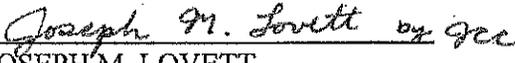
SO AGREED:

**For Plaintiffs:**

Dated: Aug. 25, 2010

  
JENNIFER C. CHAVEZ  
Earthjustice  
1625 Massachusetts Avenue, NW, Suite 702  
Washington, D.C. 20036  
Telephone: (202) 667-4500  
Facsimile: (202) 667-2356  
E-mail: jchavez@earthjustice.org  
Counsel for Plaintiffs West Virginia  
Highlands Conservancy, Coal River  
Mountain Watch, and Ohio Valley  
Environmental Coalition

Dated: 8-25-10

  
JOSEPH M. LOVETT  
Appalachian Citizens Law Center  
P.O. Box 507  
Lewisburg, WV 24901  
Counsel for Plaintiffs Sierra Club,  
West Virginia Highlands Conservancy,  
Southern Appalachian Mountain  
Stewards, and Kentucky Waterways  
Alliance

Dated: 8-25-10

Aaron Isherwood by JCC  
AARON ISHERWOOD  
85 Second Street, 2nd Floor  
San Francisco, CA 94105  
Counsel for Plaintiffs Sierra Club and  
Southern Appalachian Mountain  
Stewards

Dated: 8-25-10

Mary Cromer by JCC  
STEVE SANDERS  
MARY CROMER  
Appalachian Citizens Law Center  
52 Broadway, Suite B  
Whitesburg, KY 41858  
Counsel for Plaintiff Save Our  
Cumberland Mountains

Dated: 8-25-10

Scott Edwards by JCC  
SCOTT EDWARDS  
Waterkeeper Alliance  
50 S. Buckhout Suite 302  
Irvington, NY 10533  
Counsel for Plaintiff Waterkeeper  
Alliance

**For the United States:**

Date:

Aug. 13, 2010

By:

IGNACIA MORENO  
Assistant Attorney General  
Environment & Natural Resources Division



BRIAN H. LYNK, Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
*Counsel for the United States*

## SETTLEMENT AGREEMENT REGARDING COSTS OF LITIGATION

This Settlement Agreement (“Agreement”) is made between Plaintiff National Parks Conservation Association (“NPCA”) and the United States of America, on behalf of Defendants Ken Salazar, Secretary of the Interior, Joseph Pizarchik, Director of the Office of Surface Mining Reclamation and Enforcement (“OSM”), and Lisa P. Jackson, Administrator of the United States Environmental Protection Agency (collectively, “the United States”).

WHEREAS, on January 16, 2009, NPCA filed a complaint, which it later amended on February 13, 2009, in the United States District Court for the District of Columbia under the case caption NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115, seeking judicial review of a final rule entitled “Excess Spoil, Coal Mine Waste, and Buffers for Perennial and Intermittent Streams” (the 2008 SBZ Rule”), 73 Fed. Reg. 75,814 (Dec. 12, 2008);

WHEREAS, NPCA’s complaint alleged violations of section 7(a)(2) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2), as well as other statutes, including a claim that OSM violated the ESA by failing to initiate formal consultation under section 7(a)(2) of the ESA in connection with the 2008 SBZ Rule. See NPCA Amended Complaint Count II;

WHEREAS, Defendants subsequently filed a motion for voluntary vacatur and remand acknowledging a failure to initiate consultation under the ESA in connection with the 2008 SBZ Rule, and the Court denied the motion;

WHEREAS, on March 19, 2010, NPCA, the United States, and the plaintiffs in a separate action entitled Coal River Mountain Watch, et al. v. Kempthorne, et al., Case No. 1:08-cv-02212 (D.D.C.), collectively entered into an agreement (the “March 19, 2010 Settlement Agreement”) which settled both the NPCA complaint and the Coal River complaint, but did not resolve what

amount of reasonable costs of litigation, including attorney's fees, would be paid either to NPCA or to the Coal River Plaintiffs;

WHEREAS, section 11(g)(4) of the ESA, 16 U.S.C. § 1540(g)(4), authorizes the Court, "in issuing any final order in any suit brought pursuant to" 16 U.S.C. § 1540(g)(1), to "award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate"; and

WHEREAS, NPCA and the United States (collectively "the Parties") wish to settle all of NPCA's potential claims for costs of litigation, including reasonable attorneys' fees, incurred through the Effective Date of this Agreement in connection with the case originally captioned NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115, in order to avoid unnecessary litigation and without any admission of law or fact;

NOW, THEREFORE, and in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Pursuant to 16 U.S.C. § 1540(g)(4), the United States agrees to pay, and NPCA agrees to accept, the sum of \$48,142.40 as a full settlement of all potential claims by NPCA for its costs of litigation, including reasonable attorneys' fees, incurred through the Effective Date of this Agreement in connection with the case originally captioned NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115. Said payment shall be made by electronic funds transfer to an account to be designated by NPCA.

2. If the United States makes the payment specified in Paragraph 1 within 90 days following the Effective Date of this Agreement, or if NPCA accepts such payment at any time thereafter, then such payment or acceptance constitutes full and final payment of all costs and fees incurred by NPCA in connection with the case originally captioned NPCA v. Kempthorne.

et al., Case No. 1:09-cv-00115, for the period up to and including the Effective Date of this Agreement. Upon such payment or acceptance, NPCA shall release the United States, including the three named Defendants and all other departments, agencies and instrumentalities of the United States and their officers and employees, from any and all claims pursuant to section 11(g)(4) of the ESA, 16 U.S.C. § 1540(g)(4), or any other applicable provision or statute, regarding the above-mentioned costs of litigation (including attorneys' fees).

3. In the event the United States fails make a payment as specified in Paragraph 1 of this Agreement within 90 days following the Effective Date of this Agreement, then NPCA reserves the right to make application to the Court for an award of costs of litigation (including attorneys' fees) incurred in connection with the case originally captioned NPCA v. Kempthorne, et al., Case No. 1:09-cv-00115, without regard to the amount of the payment specified in Paragraph 1. Such application shall be NPCA's sole remedy for any failure by the United States to make timely payment under this Agreement. The United States agrees that it shall not oppose such application on the ground that it is untimely as a consequence of Section 7 of the March 19, 2010 Settlement Agreement, but otherwise reserves its rights to oppose such application.

4. The Effective Date of this Agreement shall be the date on which it has been signed by both NPCA and the United States. This Agreement may be executed in any number of original counterparts, each of which shall be deemed to constitute one Agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

5. Notwithstanding any other provision of this Agreement, payments by the United States are subject to the availability of appropriated funds in accordance with the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and 1511-19. No provision of this Agreement shall be interpreted as or

constitute a commitment or requirement that the United States obligate or pay funds in contravention of said Anti-Deficiency Act or any other applicable provision of law.

6. The undersigned representatives of each Party certify that they have been duly authorized by the Party they represent to enter into this Agreement.

SO AGREED:

For NPCA:

Date: \_\_\_\_\_

\_\_\_\_\_  
DEBORAH M. MURRAY  
Southern Environmental Law Center  
201 West Main Street, Suite 14  
Charlottesville, VA 22902  
Telephone: (434) 977-4090  
Facsimile: (434) 977-1483  
E-mail: [dmurray@selcva.org](mailto:dmurray@selcva.org)  
*Counsel for Plaintiff National Parks  
Conservation Association*

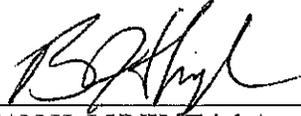
**For the United States:**

IGNACIA MORENO  
Assistant Attorney General  
Environment & Natural Resources Division

Date:

5/18/10

By:



BRIAN H. LYNK, Trial Attorney  
Environmental Defense Section  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Telephone: (202) 514-6187  
Facsimile: (202) 514-8865  
E-mail: [brian.lynk@usdoj.gov](mailto:brian.lynk@usdoj.gov)  
*Counsel for the United States*

## Burley, Jamie L

---

**From:** Ishee, Mary Katherine  
**Sent:** Friday, February 25, 2011 6:06 PM  
**To:** Pizarchik, Joseph G; Owens, Glenda H.; Shawley, Dianne M; Smith, Nancy L.; Mcllwain, Patruzzelli D.; Braxton, Patrick L.; Rideout, Sterling; Mali, Peter L.; Stokes, Ruth; Eichenbaum, Louis R.; Woronka, Ted; Shope, Thomas D. "Tom"; Klein, Al; Barchenger, Ervin  
**Subject:** DOCUMENT REQUEST - IMMEDIATE RESPONSE REQUIRED  
**Attachments:** SPR-EIS White Sheet Attachments.pdf; Whitesheet instructions Hastings requests 2 11.pdf  
**Importance:** High

We have received two requests from Chairman Hastings for documents regarding the OSM's Stream Protection Rule. OSM is responsible for providing all of its responsive documents and staff certifications to the Office of the Executive Secretariat's Document Management Unit (DMU) by March 10, 2011. This will require you to submit all responsive documents to the OSM Technical Contact, Melissa Allen, no later than March 4, 2011. You may direct any questions regarding these document productions to Melissa at 202-208-3652 or [mallen@osmre.gov](mailto:mallen@osmre.gov).

### URGENT ACTION ITEMS

#### Search for Responsive Documents

- **First Hastings Request, ESO# 00025637:** We have identified 5 search request items (see the search table on pg. 4-6 of the guidance package). Request items #1-4 of this request are applicable to **all OSM Offices identified in the guidance**. Item #5 is applicable only to the OSM Office of Program Support. Please review these request items and their corresponding date range and provide full and complete copies of any documents (i.e., emails, reports, drafts, etc.) identified as responsive to the OSM Technical Contact, Melissa Allen, Room 132 of the SIB no later than March 4, 2011. When submitting documents to the Technical Contact, please specify which request item numbers your documents are responsive to and be sure to keep distinct batches separate.
- **Second Hastings Request, ESO# 00025866—Applicable only to Director's office staff:** See the attached guidance. Additional instructions will be provided by the OSM Technical Contact, Melissa Allen, on Monday.

#### Staff and Supervisor Certifications

You must certify to the Senior Contact (Mary Katherine Ishee) that you and your staff (if applicable) have searched for responsive documents by completing certification forms (see attachments 4a and 4b on pg. 23-25 of the guidance package), **regardless of whether or not responsive information is found**. All Completed certifications should be sent to Melissa Allen to arrive no later than March 4, 2011.

Thank you for your prompt assistance to this matter.

Doc Hastings or Manington  
Ranking Republican Member

## U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

February 8, 2011

The Honorable Joseph G. Pizarchik  
Director  
Office of Surface Mining, Reclamation and Enforcement  
U. S. Department of Interior  
1951 Constitution Avenue, NW  
Washington, DC 20240

Dear Director Pizarchik,

Recent news reports have highlighted the significant job losses and economic impacts that could result from changes being considered by the Office of Surface Mining (OSM) to fifteen elements of its coal mining regulation program. According to an official document obtained by the Associated Press, the agency's preferred "Stream Protection Rule" could cost at least 7,000 jobs and reduce production in 22 states. While it's incredibly troubling that the Administration is admitting its rule would eliminate thousands of jobs, it's even more alarming that these numbers appear to be conservative estimates. It is deeply concerning that OSM is proceeding with a sweeping rulemaking that will devastate our Nation's ability to produce energy, cripple state budgets, and destroy good paying jobs for tens of thousands of families around the country.

There are real questions about the need to revise these rules given that the original "Stream Buffer Zone Rule" was finalized just two years ago in December 2008 after a multi-year deliberative process that included extensive environmental analyses and public comment. OSM's first attempt to revoke this rule was stopped by the Courts. However, it's clear that OSM and the Administration never intended to let the 2008 rule stand as stated in OSM's June 18, 2010 Federal Register Notice: "we had already decided to change the rule following the change of Administrations on January 20, 2009."<sup>1</sup>

Clearly the Administration has preconceived notions of the changes it wants to execute and is pursuing those goals on a self-imposed deadline without any adequate consideration of the impacts on workers, jobs or communities.

The Committee intends to conduct thorough oversight on this issue and the economic impacts of the proposed rule. Please provide me the analysis OSM has conducted on the specific impacts of the present rulemaking effort with regards to:

<sup>1</sup> <http://edocket.access.gpo.gov/2010/pdf/2010-14727.pdf>

The Hon. Joseph G. Pizarchik  
February 8, 2011  
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1. Jobs and employment in coal mining, projected decreases in U.S. coal production and the impact on other industries and coal-dependent jobs as a result of this rulemaking.
2. Revenues shared with state and tribal entities, specifically estimates of losses related to AML funds for states and tribes and tribal revenue sharing through production royalties and lease bonus bids; and lost revenues from state severance and sales taxes.
3. Efforts by OSM to consider the impacts of this rulemaking to domestic electricity costs related to coal production declines identified in the EIS.
4. Environmental analysis and supporting scientific documentation.

Also, while your office quickly prepares that information, I would seek a response to the following questions no later than February 25, 2011:

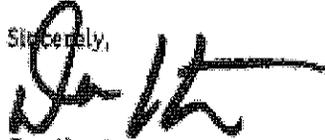
1. The current rule, which OSM is attempting to revoke, was the result of years of public participation and the product of multiple state and agency involvement. Why is OSM under such tremendous haste to conduct such an overarching rulemaking to replace the current rule?
2. How many job losses does OSM consider acceptable in selecting a preferred alternative? Please state a maximum number.
3. OSM's draft EIS states that subsidence from underground longwall mining that impacts streams on the surface will be considered material damage and will therefore not be allowed. How many underground coal mining jobs are anticipated to be lost in each impacted state because of the proposal?
4. Has OSM considered pursuing a rulemaking that would help create jobs?
5. Does OSM plan to evaluate the rulemaking under the January 18, 2011 Executive Order 13563, "Improving Regulation and Regulatory Review"? In addition, how has OSM complied with Executive Order 13211 "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use"?
6. How did OSM select the contractor for preparing the draft EIS and what experience or credentials do the contractor and any subcontractor, possess with respect to coal mine planning and operations and coal markets?

The Hon. Joseph G. Pizarchik  
February 8, 2011  
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7. Would you provide the names and affiliation of the members of the DEIS Mining Analysis team and the Subject Matter Experts used in the informal elicitation process?
8. Considering that portions of the OSM's rule have been leaked to various media outlets, would you please provide the Committee with a complete copy of the draft rule and EIS?
9. How much money was spent by OSM on the preparation of the 2008 rule throughout its development? How much money will OSM be spending on this rewrite of that rule and what is the source of these funds?
10. What is your estimate of the costs to the states to implement the 2008 rule and the additional money to implement the new rule?

The stakes are too high for the Administration to arbitrarily impose job-destroying policies and rewrite rules. OSM's hasty pursuit of new regulations that admittedly will destroy thousands of jobs will be examined by this Committee. A prompt response to these requests is appreciated.

Sincerely,



Doc Hastings  
Chairman

497952

2011 FEB 11 10:05 AM

RECEIVED

Cc: The Honorable Ken Salazar, Secretary, Department of the Interior

DOC HASTINGS OF WASHINGTON  
RANKING REPUBLICAN MEMBER

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

February 10, 2011

The Honorable Joseph G. Pizarchik  
Director  
Office of Surface Mining, Reclamation and Enforcement  
U. S. Department of Interior  
1951 Constitution Avenue, NW  
Washington, DC 20240

Dear Director Pizarchik,

As you are aware the House Committee on Natural Resources is conducting an investigation into the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule."<sup>1</sup>

As part of the investigation it is requested that the following be delivered to me no later than March 18, 2011. Please provide copies of information on meetings and all correspondence including emails, letters, faxes, and phone logs between your office, and the following federal agencies and offices, states and non-governmental organizations:

1. Federal Agencies and Offices:

- Ms. Carol Browner, White House Office of Energy and Climate Change Policy
- Ms. Lisa Jackson, Administrator of the Environmental Protection Agency (EPA)  
Mr. Peter Silva, Assistant Administrator Office of Water - EPA  
Mr. Rob Sussman, Deputy Administrator - EPA  
Mr. Greg Peck, Chief of Staff, Office of Water - EPA
- Ms. Nancy Sutley, Chair of the Council on Environmental Quality (CEQ)  
Mr. Michael Root, Associate Director for Land and Water Ecosystems - CEQ  
Mr. Amelia Salzman, Associate Director for Policy Outreach - CEQ
- Mr. Ken Salazar, Secretary of the Interior  
Mr. David J. Hayes, Deputy Secretary  
Mr. Steve Black, Counselor to the Secretary  
Ms. Hilary Tompkins, Solicitor of the Interior  
Ms. Rhea Suh, Assistant Secretary, Policy Management and Budget  
Mr. Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks  
Ms. Wilma Lewis, Assistant Secretary, Land and Minerals Management

<sup>1</sup> <http://edocket.access.gpo.gov/2010/pdf/2010-14777.pdf>

The Honorable Joseph G. Plzarchik  
February 10, 2011  
Page 2

- Ms. Anne Castle, Assistant Secretary, Water and Science
- Mr. Larry Echo Hawk, Assistant Secretary, Indian Affairs
- Mr. Jonathan Jarvis, Director, National Park Service (NPS) and/or other NPS employees
- Mr. Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service (FWS) and/or other FWS employees
- Ms. Marcia McNutt, Director, U.S. Geological Survey and/or other USGS employees
- Mr. Mike Connor, Commissioner, Bureau of Reclamation
- Mr. Bob Abbey, Director, Bureau of Land Management (BLM) and/or other BLM employees
- Ms. Jo Ellen Darcy, Army, U.S. Assistant Secretary of the Army (Civil Works)
- Ms. Meg Smith, Chief, Regulatory Program, Army Corps of Engineers

2. States:

- Alabama
- Indiana
- Kentucky
- New Mexico
- Utah
- Texas
- Virginia
- West Virginia
- Wyoming

3. Non-governmental Organizations:

- Appalachian Citizens Law Center
- Appalachian Voices
- Earthworks
- Keeper of the Mountains
- Kentuckians for the Commonwealth
- National Parks Conservation Association
- Northern Plains Resource Council
- Ohio Valley Environmental Coalition
- Save Our Cumberland Mountains
- Sierra Club
- Southern Appalachian Mountain Stewards
- Southern Utah Wilderness Alliance

The Honorable Joseph G. Pizarchik  
February 10, 2011  
Page 3

- Waterkeeper Alliance
- West Virginia Highlands Conservancy
- WildEarth Guardians

It is our understanding that the Department of the Interior is a customer of ZANTAZ. Please use the ZANTAZ software to identify and retrieve the information requested above.

Your cooperation and prompt response to this request is appreciated.

Sincerely,

  
Doc Hastings  
Chairman

## What Information to Look For and Highlight When Responding to Document Requests from Congress

Congress has significant oversight authority to review the activities of Federal agencies, including the Department of the Interior. Under this authority, Congress frequently requests all manner of documents from the Department.

There's no magic to responding to these requests, and it is a core part of your job to perform the search, correctly prepare and submit responsive documents, and to certify your search efforts as explained in Attachment 3 to this package.

### Your Main Task in Reviewing Potentially Responsive Documents

Your main task is searching your files for responsive documents, reading those documents, and identifying *privileged or confidential* information and other agencies' "equities" (information that some agency other than DOI might be interested in) that the Department of the Interior might want to withhold from release.

Your review is a "first cut" in identifying this type of information which, when you find it, you must highlight by filling in the "review" circle on the Document Target Sheet ("bubble sheet") (as explained in Attachment 3 to this package) and tabbing the information with Post-it Notes or some other easily identifiable method.

### Types of Information You Must Highlight When Reviewing Documents

Presidential Communications. This category includes emails, reports, etc. between high-ranking government officials (Department Secretaries, Deputy Secretaries, Assistant Secretaries, etc.) and advisors to the President in the Executive Office of the President or the President himself.

National Security/Diplomatic/State Secrets. You are unlikely to come across this type of information in DOI documents, but if you see something that you think might fall into this category call your solicitor.

Law Enforcement Matters. Information on pending criminal investigations or civil enforcement matters may be protected and should be flagged. This includes witness statements and reports to law enforcement officials investigating a crime as well as information on active civil enforcement actions such as natural resource damages claims.

Attorney-Client Communications. This category includes documents that reflect written or confidential matters sent to an attorney for the purpose of getting legal advice.

Attorney Work Product. This category includes materials prepared by an attorney in contemplation of litigation. Such memos, e-mails or legal opinions are often marked with words "... Attorney Work Product Prepared in anticipation of Litigation ..." or something similar.

*Deliberative Process Materials.* These are materials that capture the substance of a debate on an issue within the Department, or between the Department and other Agencies or the White House, especially at high levels. Generally, the deliberative process materials that are protected are those that show how a decision is being made; materials concerning decisions that are already made are less often the subject of withholding, but still should be flagged for review.

*Privacy Materials.* Although the Privacy Act can not be used to withhold information from Congress, some information regarding individuals reveals private details that might warrant protection. Any material that reveals information protected by the Privacy Act (social security numbers, phone numbers, addresses, etc.), medical information, and personnel actions should be flagged for attorney review.

*Privileged Trade Secrets and Commercial or Financial Information.* "Trade Secrets" are types of information, including formulae, processes or devices that are used in the manufacture or processing of goods, materials, or resources. There are many examples of such information, including certain data pertaining to oil company reservoir estimates and other aspects of oil and gas leasing and production operations, which are not releasable under Departmental regulations. Highlight all such information for review by attorneys in the Solicitor's Office. "Privileged or Confidential Commercial or Financial Information" is a broad category of information relating to commerce or the conduct of business.

*Information protected by Other Laws.* Some statutes, such as the Archeological Resources Protection Act and the National Parks Omnibus Act, allow the Department to withhold information from the public (but not necessarily from Congress) to protect fragile or valuable cultural resources. You must highlight such information for review by an attorney from the Solicitor's Office.

*Other Agencies' Equities.* Information between the high-ranking officials of the Department of the Interior and other agencies, or between high-ranking officials of other agencies, should be highlighted for Solicitor's Office Review.

#### Whom to Ask if You Have Questions about Documents You Review

If you have questions about information in documents you are reviewing, you should first ask your bureau or agency Senior Contact for clarification.

## **How to Prepare and Submit Documents and Search Certifications to the Document Management Unit**

If you are the Technical Contact follow these instructions to submit documents to the Document Management Unit.

If you fail to follow these instructions, the Document Management Unit will return the documents you submit to you to correct errors and you will have to submit the documents again.

### **How to Prepare Documents for Submission**

**Do Not** submit original documents. **Do** submit good copies only on 8 1/2 x 11 white 20 lb Xerox paper.

**Do Not** submit double-sided copies. **Do** submit only single-sided copies.

**Do Not** print an entire e-mail chain as a single document. **Do** print each new, individual e-mail separately along with all the preceding emails in the chain; each new e-mail and the preceding emails in the chain constitute one document.

**Do Not** bind documents with paper clips, staples, tape, etc. **Do** submit documents as individual sheets; this means that you must unbind notebooks, briefing binders, etc. and copy each page as instructed above.

**Do Not** submit odd-sized papers. **Do** tape odd-sized papers (receipts, ticket stubs, etc.) to an 8 1/2 x 11 inch sheet and copy as instructed above.

### **How to Fill In Batch Sheets and Document Sheets**

Completed Batch Sheets (Attachment 2a) and Document Sheets (Attachment 3b) are required to allow electronic processing of the documents you submit.

**Do Not** copy the example Batch and Document sheets at Attachments 3a and 3b. **Do** print as many of each as you need only on 20 lb Xerox paper using a high quality laser printer.

**Do Not** use a pencil to fill out the Batch and Document Sheets. **Do** use only a blue or black ink pen or marker.

### **How to Use Batch Sheets**

You must put a Batch Sheet (Attachment 3a) on top of each new *folder, group of related documents or stand-alone individual document* you submit.

- Print "Project ESO #" (the number assigned by the Document Management Unit to this document production request), the name of the person who provided the folder or group of related documents and the title of the folder or group of documents on the Batch Sheet.

- The title of the folder or group of documents must describe accurately the subject or type of documents in the folder or group.

### How to Use Document Sheets

You must put a Document Sheet (Attachment 3b), also known as the "bubble sheet", on top of each *individual document* you submit, regardless of whether that document is in a folder, within a related group of documents, or a single, stand-alone document. On each Document Sheet, you must:

- Fill in the circle for month, day and year for each individual document.
- Fill in the circle for only one document type for each individual document. If none of the document types apply, fill in "other".
- Fill in the circle for the request number the document is responsive to. You can find the request number on the Search Table at Attachment X of this package.
- Print the title of the document in the space provided on the Target Sheet (For example, "Email from X to Y"; "Briefing by X for Y").

Some documents might contain sensitive, confidential, or privileged information that attorneys in the Office of the Solicitor will need to review. If you find such information in a document, fill in the "review" circle on the Document Sheet. See Attachment 2 for an explanation of sensitive, confidential and privileged information.

### How to Document the Search

All employees who might have responsive documents must conduct a thorough search of their records.

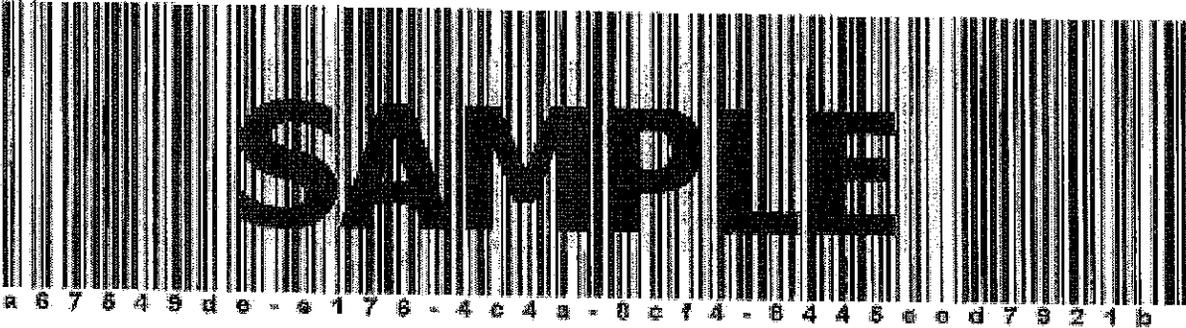
**Staff Certification (Attachment 4a):** Staff-level employees must record the time they spent searching for, collecting, preparing and copying responsive documents, and submit their certification to their Office Supervisor.

**Office Supervisor Certification (Attachment 4b):** Office Supervisors collect certifications from their staff employees, calculate the time and resources their employees spent on search activities, and submit their Office Supervisor Certification to their Senior Contact.

**Senior Contact Certification (Attachment 4c):** Senior Contacts collect Office Supervisor Certifications, calculate the time spent and resources by the organization in search activities, then submit that information to the Document Management Unit.

### Questions About Processing Documents?

Contact you bureau or agency Senior Contact for assistance.

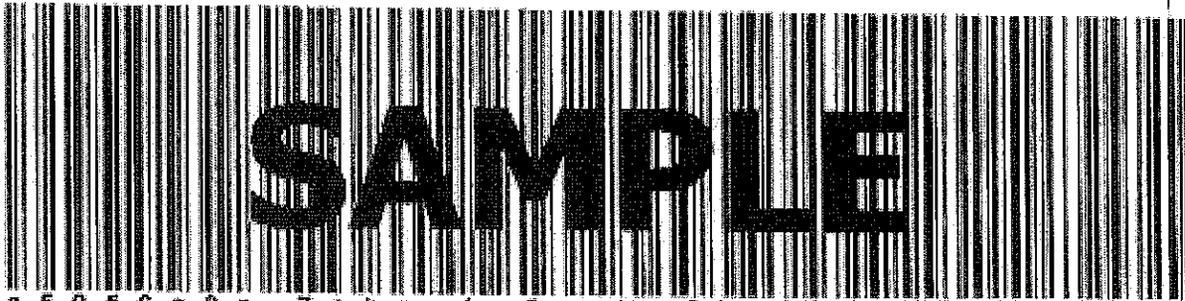


Congressional Batch Card

Project: \_\_\_\_\_

Provider's Name: **DO NOT USE**

Batch Title: \_\_\_\_\_



a 6 0 5 6 c 8 e - 7 c b c - 4 e 6 c - b a 5 b - f 3 d 3 4 6 e 9 1 a d 3

### Congressional Document Card

REQUEST NUMBER (Choose One Only)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- Review

DOCUMENT DATE

Month	Day	Year
<input type="radio"/> 1	<input type="radio"/> 0 <input type="radio"/> 0	<input type="radio"/> 18 <input type="radio"/> 0 <input type="radio"/> 0
<input type="radio"/> 2	<input type="radio"/> 1 <input type="radio"/> 1	<input type="radio"/> 19 <input type="radio"/> 1 <input type="radio"/> 1
<input type="radio"/> 3	<input type="radio"/> 2 <input type="radio"/> 2	<input type="radio"/> 20 <input type="radio"/> 2 <input type="radio"/> 2
<input type="radio"/> 4	<input type="radio"/> 3 <input type="radio"/> 3	<input type="radio"/> 3 <input type="radio"/> 3
<input type="radio"/> 5	<input type="radio"/> 4	<input type="radio"/> 4 <input type="radio"/> 4
<input type="radio"/> 6	<input type="radio"/> 5	<input type="radio"/> 5 <input type="radio"/> 5
<input type="radio"/> 7	<input type="radio"/> 6	<input type="radio"/> 6 <input type="radio"/> 6
<input type="radio"/> 8	<input type="radio"/> 7	<input type="radio"/> 7 <input type="radio"/> 7
<input type="radio"/> 9	<input type="radio"/> 8	<input type="radio"/> 8 <input type="radio"/> 8
<input type="radio"/> 10	<input type="radio"/> 9	<input type="radio"/> 9 <input type="radio"/> 9
<input type="radio"/> 11		
<input type="radio"/> 12		

DOCUMENT TYPE (Choose One Only)

- Agenda
- Analysis
- Appraisal
- Article/News
- Audit
- Briefing Paper
- Calendar
- Contract
- Correspondence/Memo
- Court Decision/Citizen Order
- Declaration
- E-mail
- Grant
- Lease
- Map
- Meeting/Minutes
- MOU
- Notes
- Notice
- Other
- Proposal
- Receipt
- Regulation
- Report
- Statement
- Status
- Subpoena
- Testimony
- Transcript
- Travel Voucher/Order

DOCUMENT TITLE

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I, \_\_\_\_\_ on the staff of \_\_\_\_\_, of the  
 (Name) (Office Supervisor)  
 \_\_\_\_\_ of \_\_\_\_\_ do hereby certify to the Office  
 (name of divisional, regional or field office) (bureau or office)

Supervisor, that:

1. I have reviewed the instruction memorandum and attachment pertaining to the February 8<sup>th</sup> and 10<sup>th</sup>, 2011; requests from Chairman Hastings for documents regarding the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule." (ESO # 00025637 & 00025865)

2. I have undertaken a good faith search for all potentially responsive documents within the undersigned's possession or control;  
**ALSO**  
 If I was assigned to search for all potentially responsive documents created or stored by a former employee, in places known by current staff of the office to be kept by the former employee, please give the former employee's name:  
 \_\_\_\_\_

3. **CHECK THE APPROPRIATE ALTERNATIVE:**

I have reason to believe that the documents identified with this certification constitute (i) all documents within the possession or control of the undersigned, and/or (ii) if certifying for a former employee, all documents created or stored, and in places known by current staff to be stored, by the above named former employee.

OR

I have reason to believe that there are no potentially responsive documents (i) within the possession or control of the undersigned, or (ii) if certifying for a former employee, all documents created or stored, and in places known by current staff to be stored, and accordingly, has not identified any documents.

4. The following is information needed to calculate costs associated with my performing the search for and production of records.

Hours/grades of individuals performing work:

Grade/Step Level	Number of Hours	Hourly Rate	Total Cost

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Print name

\_\_\_\_\_  
 Title

I, the \_\_\_\_\_ for the \_\_\_\_\_ located in \_\_\_\_\_  
 (insert title) (name of divisional, regional or field Office)  
 \_\_\_\_\_, do hereby certify to \_\_\_\_\_  
 (city and state of divisional, regional or field office) (name of Senior Contact)

In his/her capacity as the Senior Contact tasked with coordinating searches for records responsive to the February 8<sup>th</sup> and 10<sup>th</sup>, 2011, requests from Chairman Hastings for documents regarding the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule." (ESO # 00025637 & 00025866):

1. I have reviewed the instruction memorandum and attachments relating to the request of February 8<sup>th</sup> and 10<sup>th</sup>, 2011, requests from Chairman Hastings for documents regarding the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule." (ESO # 00025637 & 00025866).
2. I have directed every person in the office who might reasonably be believed to be a possible possessor of potentially responsive documents to conduct a search and to sign a staff certification form.
3. I have assigned staff of the office to certify that a search and submission of documents, if any, was conducted for potentially responsive documents created or stored, in places known by current staff to be stored, by former employees of the office, if any.
4. I have also searched or supervised the search for responsive documents in my possession and control.
5. **CHECK THE APPROPRIATE ALTERNATIVE:**

I have reason to believe that the documents identified with this certification constitute all documents within the possession or control of the staff in the office.

OR

I have reason to believe that there are no responsive documents within the possession or control of the staff in the office, and accordingly, have not identified any documents.

6. The following is information needed to calculate costs associated with performing the search for and production of documents in this office.



I, the Senior Contact in the \_\_\_\_\_ (bureau or office) tasked with coordinating searches in the bureau or office for documents potentially responsive to the February 8<sup>th</sup> and 10<sup>th</sup>, 2011, requests from Chairman Hastings for documents regarding the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule," (ESO # 00025637 & 00025866), do hereby certify to the Office of the Executive Secretariat that:

1. I have reviewed the instruction memorandum and attachments relating to the February 8<sup>th</sup> and 10<sup>th</sup>, 2011, requests from Chairman Hastings for documents regarding the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule." (ESO # 00025637 & 00025866)
2. I sent an Office Supervisor Certification to, and received a completed, signed Office Supervisor Certification back from, the head of each \_\_\_\_\_ (division, regional and/or field office, as appropriate) of the Bureau or Office (collectively, Office Supervisors).
3. I asked each Office Supervisor
  - (a) to direct every staff member in his or her office who might reasonably be believed to be a possessor of potentially responsive documents to undertake a good faith search for all such potentially responsive documents within their possession or control;
  - (b) to designate staff to search for and submit documents created by former employees of this bureau or office; and
  - (c) to certify to the undersigned that he or she has reason to believe that those searches were undertaken.
4. I have received a certification from each Office Supervisor in the bureau or office. I have also searched or supervised the search for responsive documents in my possession and control.
5. **CHECK THE APPROPRIATE ALTERNATIVE:**

I have reason to believe that the documents searched for and submitted pursuant to the February 8<sup>th</sup> and 10<sup>th</sup>, 2011, requests from Chairman Hastings for documents regarding the Office of Surface Mining's rewrite of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule." (ESO # 00025637 & 00025866) and this certification are all the potentially responsive documents in the possession or control of the bureau or office.

OR

I believe or have reason to believe that there are no potentially responsive documents within the possession or control of the bureau or office.

The following is the total time and cost associated with performing the search, identification and production of documents for the Bureau or Office. This amount should be calculated by totaling the amounts provided by Office Supervisors for all staff time, including their FOIA Officers and Program Attorneys.

Total Time in Hours	Total Cost

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title



## United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
Washington, D.C. 20240



To: Office of Surface Mining Reclamation and Enforcement:  
Office of the Director  
Office of Program Support  
Office of Communications  
Office of Planning, Budget and Analysis  
Information Resources Office  
Finance and Administration Division  
Appalachian Regional Office  
Mid-Continent Regional Office  
Western Regional Office

From: Mary Katherine Ishee, Senior Advisor to the Director  
Office of Surface Mining Reclamation and Enforcement

Re: The February 8<sup>th</sup> and 10<sup>th</sup>, 2011, requests from Chairman Hastings for documents regarding the Office of Surface Mining Reclamation and Enforcement's Stream Protection Rule. (ESO # 00025637 and 00025866)

Date Range to Search:

February 8<sup>th</sup> letter: November 30, 2010 to February 8, 2011

February 10<sup>th</sup> letter: November 6, 2009 to February 10, 2011

Deadline for Submission of Documents: *March 4, 2011*

The attached letters from Chairman Hastings request documents regarding the Office of Surface Mining Reclamation and Enforcement's refinement of the 2008 "Stream Buffer Zone Rule" now called the "Stream Protection Rule." A copy of Chairman Hastings' letters may be found at Attachment 1.

These requests require that the appropriate offices promptly produce all requested records. You are asked to provide full and complete copies of any and all requested records.

For this document request and production:

- The OSM Technical Contact and the Office of the Solicitor are responsible for providing additional guidance on the search for these documents, as necessary. Please see Attachment 2 for guidance on what information to look for and highlight when responding to document requests from Congress.
- Some of the requested documents may currently be in the possession of a contractor or subcontractor. Those documents will be requested separately from the contractor or subcontractor and you will not need to conduct a search for documents in their possession. You should, however, provide all responsive documents in your possession.

*Any questions regarding these issues should be directed prior to submittal to: Melissa Allen, the OSM Technical Contact, at (202) 208-3652 or to Richard Myers in the Office of the Solicitor – Division of General Law at (202) 208-5216.*

The Office of the Executive Secretariat's Document Management Unit (DMU) is responsible for developing the specific guidance on copying, preparing, and submitting documents to the Department. Any questions regarding these issues should be directed to Melissa Allen, the OSM Technical Contact, at (202) 208-3652 who will consult with the DMU, as necessary.

**Search Table for February 8, 2011 Letter (ESO# 00025637):**

Req. #:	Documents requested:	Date Range for Responsive Records	Responsible Recipient
	"[T]he analysis OSM has conducted on the specific impacts of the present rulemaking effort with regards to:		The following OSM Offices:
1.	"Jobs and employment in coal mining, projected decreases in U.S. coal production and the impact on other industries and coal-dependent jobs as a result of this rulemaking."	11/30/2009 to 2/8/2011	<p>The following OSM Offices:</p> <p>Director's office</p> <p>Office of Program Support:</p> <ul style="list-style-type: none"> <li>• Division of Regulatory Support</li> <li>• Division of Reclamation Support</li> </ul> <p>Office of Communications</p> <p>Office of Planning, Analysis and Budget</p> <p>Information Resources Office</p> <p>Finance and Administration Division</p> <p>Appalachian Region</p> <p>Mid-Continent Region</p> <p>Western Region</p>
2.	"Revenues shared with state and tribal entities, specifically estimates of losses related to AML funds for states and tribes and tribal revenue sharing through production royalties and lease bonus bids; and lost revenues from state severance and sales taxes."	11/30/2009 to 2/8/2011	<p>The following OSM Offices:</p> <p>Director's office</p> <p>Office of Program Support:</p> <ul style="list-style-type: none"> <li>• Division of Regulatory Support</li> <li>• Division of Reclamation Support</li> </ul>

			<p>Office of Communications</p> <p>Office of Planning, Analysis and Budget</p> <p>Information Resources Office</p> <p>Finance and Administration Division</p> <p>Appalachian Region</p> <p>Mid-Continent Region</p> <p>Western Region</p>
3.	"Efforts by OSM to consider the impacts of this rulemaking to domestic electricity costs related to coal production declines identified in the EIS."	11/30/2009 to 2/8/2011	<p>The following OSM Offices:</p> <p>Director's office</p> <p>Office of Program Support:</p> <ul style="list-style-type: none"> <li>• Division of Regulatory Support</li> <li>• Division of Reclamation Support</li> </ul> <p>Office of Communications</p> <p>Office of Planning, Analysis and Budget</p> <p>Information Resources Office</p> <p>Finance and Administration Division</p> <p>Appalachian Region</p> <p>Mid-Continent Region</p> <p>Western Region</p>
4.	"Environmental analysis and supporting scientific documentation."	11/30/2009 to 2/8/2011	<p>The following OSM Offices:</p> <p>Director's office</p> <p>Office of Program Support:</p> <ul style="list-style-type: none"> <li>• Division of Regulatory</li> </ul>

			Support <ul style="list-style-type: none"> <li>• Division of Reclamation Support</li> </ul> Office of Communications Office of Planning, Analysis and Budget Information Resources Office Finance and Administration Division Appalachian Region Mid-Continent Region Western Region
Q8.	"[P]rovide the Committee with a complete copy of the draft rule and EIS"	11/30/2009 to 2/8/2011	OSM Office of Program Support

**Search Table for February 10, 2011 Letter (ESO# 00025866):**

Req. #:	Documents requested:	Date Range for Responsive Records	Responsible Recipient
	Please provide copies of information on meetings and all correspondence including emails, letter, faxes, and phone logs between your office, and the following in relation to the OSM's Stream Protection Rule:		Office of the Director, OSM:
1.	Federal Agencies and Offices: <ul style="list-style-type: none"> <li>• Ms. Carol Browner, White House Office of Energy and Climate Change Policy</li> <li>• Ms. Lisa Jackson, Administrator of the Environmental Protection Agency (EPA)</li> <li>• Mr. Peter Silva, Assistant Administrator Office of Water -EPA</li> <li>• Mr. Bob Sussman, Deputy Administrator - EPA</li> <li>• Mr. Greg Peck, Chief of Staff, Office of Water -EPA</li> </ul>	11/6/2009 to 2/10/2011	Joe Fizarchik Glenda Owens Dianne Shawley Mary Katherine Ishee Patrick Braxton Patruzzelli Mellwain Nancy Smith

	<ul style="list-style-type: none"> <li>• Ms. Nancy Sutley, Chair of the Council on Environmental Quality (CEQ)</li> <li>• Mr. Michael Boot, Associate Director for Land and Water Ecosystems –CEQ</li> <li>• Mr. Amelia Salzman, Associate Director for Policy Outreach -CEQ</li> <li>• Mr. Ken Salazar, Secretary of the Interior</li> <li>• Mr. David J. Hayes, Deputy Secretary</li> <li>• Mr. Steve Black, Counselor to the Secretary</li> <li>• Ms. Hilary Tompkins, Solicitor of the Interior</li> <li>• Ms. Rhea Suh, Assistant Secretary, Policy Management and Budget</li> <li>• Mr. Tom Strickland, Assistant Secretary, Fish, Wildlife and Parks</li> <li>• Ms. Wilma Lewis, Assistant Secretary, Land and Minerals Management</li> <li>• Ms. Anne Castle, Assistant Secretary, Water and Science</li> <li>• Mr. Larry Echo Hawk, Assistant Secretary, Indian Affairs</li> <li>• Mr. Jonathan Jarvis, Director, National Park Service (NPS) and/or other NPS Employees</li> <li>• Mr. Rowan W. Gould, Acting Director, U.S. Fish and Wildlife Service (FWS) and/or other FWS employees</li> <li>• Ms. Marcia McNutt, Director, U.S. Geological Survey and/or other USGS employees</li> <li>• Mr. Mike Connor, Commissioner, Bureau of Reclamation</li> <li>• Bob Abbey, Director, Bureau of Land Management (BLM) and/or other BLM employees</li> <li>• Ms. Jo Ellen Darcy, Army, U.S. Assistant Secretary of the Army (Civil Works)</li> <li>• Ms. Meg Smith, Chief, Regulatory Program, Army Corps of Engineers</li> </ul>		
2.	<p>States:</p> <ul style="list-style-type: none"> <li>• Alabama</li> <li>• Indiana</li> <li>• Kentucky</li> <li>• New Mexico</li> <li>• Utah</li> <li>• Texas</li> </ul>	11/6/2009 to 2/10/2011	<p>Joe Pizarchik  Glenda Owens  Dianne Shawley  Mary Katherine Ishee  Patrick Braxton  Patruzzelli McIlwain  Nancy Smith</p>

	<ul style="list-style-type: none"> <li>• Virginia</li> <li>• West Virginia</li> <li>• Wyoming</li> </ul>		
3.	<p>Non-governmental Organizations:</p> <ul style="list-style-type: none"> <li>• Appalachian Citizens Law Center</li> <li>• Appalachian Voices</li> <li>• Earthworks</li> <li>• Keeper of the Mountains</li> <li>• Kentuckians for the Commonwealth</li> <li>• National Parks Conservation Association.</li> <li>• Northern Plains Resource Council</li> <li>• Ohio Valley Environmental Coalition</li> <li>• Save Our Cumberland Mountains</li> <li>• Sierra Club</li> <li>• Southern Appalachian Mountain Stewards</li> <li>• Southern Utah Wilderness Alliance</li> <li>• Waterkeeper Alliance</li> <li>• West Virginia Highlands Conservancy</li> <li>• Wild Earth Guardians</li> </ul>	11/6/2009 to 2/10/2011	Joe Pizarchik Glenda Owens Dianne Shawley Mary Katherine Ishee Patrick Braxton Patruzzelli McIlwain Nancy Smith

**Supervisors and Technical Contact:**

The Supervisors are responsible for ensuring that each employee in your Office who may have potentially responsive records receives a copy of this Production Guidance and is instructed to search for these records.

Supervisors should note that each responsive office is responsible for submitting all potentially responsive documents under their control. This includes the collection of documents belonging to former employees. Please ensure that every responsive office reporting to you has designated one or more persons to search for all potentially responsive documents that could have been generated by former employees.

The Technical Contact is responsible for disseminating this guidance to all persons designated in this memorandum who may have potentially responsive documents; coordinating the search; assembling the documents for production; and ensuring that certifications and other forms are completed within prescribed time frames for submission. The Technical Contact must also ensure that the documents are prepped by responsive offices according to the DMU guidelines found at Attachment 3. Any documents that are not prepped according to the DMU guidance will not be accepted and *will be returned* to the office(s) for correct preparation.

The Technical Contact for OSM is Melissa Allen.

**Certifications:**

These requests will require the completion of signed certifications by each individual searcher and a supervisor for each responsive office, as well as the Technical Contact. Please ensure that all employees and office supervisors who conduct a search complete and sign a certification



whether or not responsive information is found. Following receipt and compilation of all Staff and Office Supervisor certifications (Attachments 4a and 4b), I will sign the certification attached at Attachment 4c. Please note that the certifications ask for the time and resources required to search, collect and prepare the information responsive to this request.

All completed certifications should be sent to Melissa Allen to arrive no later than *March 4, 2011*. Melissa Allen will forward all completed certifications to Glory Baldwin in Room 7039, MIB, to arrive no later than March 10, 2011.

Attachments:

1. Chairman Hastings' February 8<sup>th</sup> and 10<sup>th</sup>, 2011 requests (6 pages)
2. What Information to Look for and Highlight When Responding to Document Requests from Congress (2 pages)
3. How to Prepare and Submit Documents and Search Certifications to the Document Management Unit
  - 3a. Batch card (1 page)
  - 3b. Document card (1 page)
  - 4a. Staff Certification (1 page)
  - 4b. Supervisor Certification (2 pages)
  - 4c. Senior Contact Certification (2 pages)

## Burley, Jamie L

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**From:** Ishee, Mary Katherine  
**Sent:** Thursday, April 14, 2011 12:08 PM  
**To:** Pizarchik, Joseph G; Owens, Glenda H.; Shawley, Dianne M; Rideout, Sterling; Stokes, Ruth; Woronka, Ted; Shope, Thomas D. "Tom"; Klein, Al; Barchenger, Ervin; Mali, Peter L.  
**Cc:** Allen, Melissa M; Wink, Douglas; Fillpot, Dirk; DeVito, Andy; Smith, Nancy L.; Ishee, Mary Katherine  
**Subject:** IMMEDIATE ACTION NEEDED: Chairman Doc Hastings and Chariman Doug Lamborn's request - ESO #00027094  
**Attachments:** Signed Guidance Package.pdf  
**Importance:** High

Attached please find guidance from the Department regarding a recent document request from Chairman Doc Hastings and Energy and Minerals Subcommittee Chairman Doug Lamborn for documents relating to OSM's Stream Protection Rule. If you are receiving this email you are responsible for submitting all necessary documents and certifications in compliance with these instructions.

OSM is responsible for providing all of its responsive documents and staff certifications to the Office of the Executive Secretariat's (OES) Document Management Unit (DMU) by April 20, 2011. This will require you to submit all responsive documents to the OSM Technical Contact, Melissa Allen, no later than Monday, April 18, 2010. You may direct any questions regarding these document productions to Melissa at 202-208-3652 or [mallen@osmre.gov](mailto:mallen@osmre.gov).

As per the instructions on page 9 of the guidance package, you may submit Xeroxed copies of documents. However, in the interest of time, we prefer to receive electronic copies of documents, where possible. The use of compressed (zipped) folders to transmit copies of emails, attachments, and other documents would be very helpful. For more information on creating a compressed folder, you can visit [this](#) Microsoft help site or consult Melissa Allen. Any questions on how documents should be submitted should be addressed to Melissa.

### URGENT ACTION ITEMS

#### Search for Responsive Documents

- **Hastings/Lamborn Request, ESO# 00027094:** OES has identified 3 search request items (see the search table on pg. 3 of the guidance package). Please review these request items and their corresponding date range and provide full and complete copies of any documents identified as responsive —regardless of whether you provided the same materials in response to previous requests - to the OSM Technical Contact, Melissa Allen, Room 132 of the SIB no later than April 18, 2011. When submitting documents to the Technical Contact, please specify the request item numbers to which your documents are responsive, and be sure to keep distinct batches separate

#### Staff and Supervisor Certifications

You must certify to the Senior Contact (Mary Katherine Ishee) that you and your staff (if applicable) have searched for responsive documents by completing certification forms (see attachments 5a and 5b on pg. 14-16 of the guidance package) **regardless of whether or not responsive information is found.** All completed certifications should be sent to Melissa Allen to arrive no later than April 18, 2011.

#### Additional Information

Please note in particular the following information from the guidance package:

- The terms “communication” and “document” are specifically defined in the request (see page 6 of the guidance package). Please respond as indicated.
- Supervisors are responsible for ensuring that each employee under your supervision who may have potentially responsive records receives a copy of this production guidance and is instructed to search for these records.
- Each office is responsible for submitting all potentially responsive documents. This includes the collection of documents belonging to former employees.
- Signed certifications should be submitted by each individual searcher, and by the supervisor. All employees and office supervisors who conduct a search must complete and sign a certification whether or not responsive information is found.
- Any questions concerning this guidance may be directed to Melissa Allen.

Thank you for your prompt assistance to this matter.

Mary Katherine Ishee



United States Department of the Interior  
OFFICE OF THE SECRETARY  
Executive Secretariat, Document Management Unit

The April 1, 2011, request from Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule).

ESO # 00027094

Date Range to Search: May 1, 2010 to April 7, 2011.

DATE DUE TO OES/DMU: Wednesday, April 20, 2011

Send to:  
OES/Document Management Unit  
Room 7039 – MIB Mailstop-7328  
1849 C. Street, N.W.  
Washington, D.C. 20240  
Voice: (202)208-3800

**Subject of request:** Requests as outlined in the table included in the guidance memorandum.

**Requestors:** Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn.

<u>Responsible Offices:</u>	<u>Responsible Individual(s):</u>
OS	Senior Contact: Chris Salotti
SOL	Senior Contact: Richard Myers
OSM	Senior Contact: Mary Katherine Ishee
ASLM	Senior Contact: Richard Cardinale

**Special Instructions:** 1.) Documents from field offices should be hand carried or delivered by Fed-Ex to the DMU, upon receipt we will contact your Program Technical to come to Room 7039 to assist as necessary. 2.) Pay special attention to Attachment 3 – Specific Guidance on Submission of documents to the DMU. 3.) Call DMU ASAP with any changes or updates to the contact information shown for your office on Attachment 4.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

**APR 13 2011**

To: Senior Contact, Office of the Secretary  
Senior Contact, Office of the Solicitor  
Senior Contact, Office of Surface Mining  
Senior Contact, Assistant Secretary for Land and Minerals

From: Fay S. Iudicello, Director   
Office of Executive Secretariat

Re: The April 1, 2011, request from Chairman Doc Hastings and Energy & Mineral Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). (ESO#00027094)

Date Range to Search: May 1, 2010 to April 7, 2011.

Deadline for Submission of Documents: *Wednesday, April 20, 2011*

The attached request from Chairman Doc Hastings and Energy & Mineral Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). A copy of Chairman Doc Hastings's April 1, 2011, request may be found at Attachment 1.

This request requires that the appropriate Department of Interior (Department) offices promptly produce all requested records. You are requested to provide full and complete copies of any and all requested records.

For this document request and production:

- The Office of the Solicitor is responsible for providing guidance on the search for these documents as necessary. Please see Attachment 2 for guidance on What Information to Look For and Highlight When Responding to Document Requests from Congress.
- *Office Directors and Senior Contacts are responsible for ensuring that only responsive documents are submitted.*

*Any questions regarding these issues should be directed prior to submittal to:* Richard Myers in the Office of the Solicitor – Division of General Law at (202) 208-5216.

The Office of the Executive Secretariat's Document Management Unit (DMU) is responsible for developing the specific guidance on copying, preparing, and submitting documents to the Department. Any questions regarding these issues should be directed to Jamie Burley or Glory Baldwin in the DMU at (202)208-3800.

**Search Table:**

*Request Number:	Documents requested:	Date Range for Responsive Records	Responsible Recipient
1.	"Any and all documents and communication relating to concerns, discussions, comments, or questions regarding the quality of the Contractor's or any of its sub-contractor's work from May 1, 2010, to the present;"	5/1/2010 to 4/7/2011	OS SOL OSM ASLM
2.	"Any and all documents and communication relating to the economic impact or potential job loss estimates or figures from October 1, 2010, to the present;"	10/1/2010 to 4/7/2011	OS SOL OSM ASLM
4.	"Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements."	5/1/2010 to 4/7/2011	SOL OSM ASLM

**\*Note:** There is no need for agency personnel to search for documents responsive to item #3 of the request as that request seeks information not currently maintained in a record. This request will be responded to outside of this Greensheet production.

**Senior and Technical Contacts:**

The Senior Contacts are responsible for ensuring that each employee in your Bureau/Office who may have potentially responsive records receives a copy of this Production Guidance and is instructed to search for these records.

Senior Contacts should note that each responsive bureau and office is responsible for submitting all potentially responsive documents. This includes the collection of documents belonging to former employees. Please ensure that every office supervisor/contact person reporting to you has designated one or more persons to search for all potentially responsive documents that could have been generated by former employees.

Technical Contacts are responsible for disseminating this guidance to all persons who, in the judgment of the Senior Contact, may have potentially responsive documents; coordinating the search; assembling the documents for production; and ensuring that certifications and other forms are completed within prescribed time frames for submission. The Technical Contacts must also ensure that the documents are prepped according to the DMU guidelines found at Attachment 3. Any documents that are not prepped according to the DMU guidance will **not** be accepted and **will be returned** to the bureau/office(s) for correct preparation.

The list of Technical Contacts may be found at Attachment 4.

**Certifications:**

This request will require the completion of signed certifications by each individual searcher, a supervisor, and the senior contact for each Bureau or Office. Please ensure that all employees and office supervisors who conduct a search complete and sign a certification **whether or not responsive information is found**. Following receipt and compilation of all Staff and Office Supervisor certifications (Attachments 5a and 5b), Senior Contacts must sign the certification attached at Attachment 5c. Please note that the certifications ask for the time and resources required to search, collect and prepare the information responsive to this request.

All completed certifications of client bureaus should be sent to Glory Baldwin in Room 7039, MIB, to arrive no later than *Wednesday, April 20, 2011*.

**Attachments:**

1. Chairman Doc Hastings's April 1, 2011 request (2 pages)
2. What Information to Look for and Highlight When Responding to Document Requests from Congress (2 pages)
3. How to Prepare and Submit Documents and Search Certifications to the Document Management Unit
- 3a. Batch card (1 page)
- 3b. Document card (1 page)
4. List of Senior Contacts and Technical Contacts (1 page)
- 5a. Staff Certification (1 page)
- 5b. Supervisor Certification (2 pages)
- 5c. Senior Contact Certification (2 pages)

DOC HASTINGS, WA  
CHAIRMAN  
DON YOUNG, AK  
JOHN J. DUNCAN, JR., TN  
LOUIE GOHMERT, TX  
ROB BISHOP, UT  
DOUG LAMBORN, CO  
ROBERT J. WITTMAN, VA  
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JOHN FLEMING, LA  
MIKE COFFMAN, CO  
TOM MCCLINTOCK, CA  
GLENN THOMPSON, PA  
JEFF DENHAM, CA  
DAN BENISHKE, MI  
DAVID RIVERA, FL  
JEFF DUNCAN, SC  
SCOTT R. TIPTON, CO  
PAUL A. GOSAR, AZ  
RAUL R. LABRADOR, ID  
KRISTI L. NOEM, SD  
STEVE SOUTHERLAND II, FL  
BILL FLORES, TX  
ANDY HARRIS, MD  
JEFFREY M. LANDRY, LA  
CHARLES J. "CHUCK" FLEISCHMANN, TN  
JON RUKNYAN, NJ  
BILL JOHNSON, OH

TODD YOUNG  
CHIEF OF STAFF

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

Dear Secretary Salazar:

The Committee on Natural Resources (Committee) is actively investigating issues surrounding the Department of the Interior's Office of Surface Mining, Reclamation and Enforcement (OSM) rewrite of the 2008 Stream Buffer Zone Rule (Rule). Through this letter, we request information and cooperation regarding communication between the Department of the Interior (DOI) and Polu Kai Services LLC (Contractor) and any of its subcontractors. Your response on behalf of DOI is important for the Committee to carry out its oversight and legislative responsibilities and to ensure that the rewrite of the Rule is consistent with state and federal laws.

Based on recent statements made by DOI officials, it appears as though the DOI purportedly expressed concerns about the quality of the Contractor's work, and information is sought to determine whether such concerns were expressed before, or only after, job loss impact information became publicly known through media reports. We also understand that as part of the Contractor's scope of work, the Contractor analyzed several different economic impact scenarios including the effect on coal mining and job loss at risk from the proposed Rule.

We request the following items:

1. Any and all documents and communication relating to concerns, discussions, comments, or questions regarding the quality of the Contractor's or any of its sub-contractor's work from May 1, 2010 to the present;
2. Any and all documents and communication relating to the economic impact or potential job loss estimates or figures from October 1, 2010 to the present;
3. A list of all individuals or entities including their titles and telephone and mailing contact information receiving chapters of the draft Environmental Impact Statement (EIS) provided by the contractor or the DOI and the date on which draft chapters of the EIS was received; and
4. Copies of any and all agreements to maintain confidentiality including but not limited to "gag" or suppression orders or agreements and related conditions associated with such orders or agreements.

Attachment 1  
Page 1 of 2  
**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

April 1, 2011

EDWARD J. MARKEY, MA  
RANKING DEMOCRATIC MEMBER  
DALE E. KILDEE, MI  
PETER A. DeFAZIO, OR  
ENI F.H. FALCOMAVAEGA, AS  
FRANK PALLONE, JR., NJ  
GRACE F. NAPOLITANO, CA  
RUSH D. HOLT, NJ  
RAUL M. GRIJALVA, AZ  
MADELEINE Z. BORDALLO, GU  
JIM COSTA, CA  
DAN BOREN, OK  
GREGORIO KILILI CAMACHO SABLAN, CNMI  
MARTIN HEINRICH, NM  
BEN RAY LUJAN, NM  
DONNA M. CHRISTENSEN, VI  
JOHN P. SARBANES, MD  
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  
April 1, 2011  
Page 2 of 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.

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, maps, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, 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.

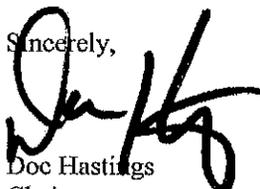
We expect a complete written response to be provided to the Committee no later than April 15, 2011.

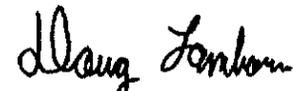
The staff contact on this matter is Tim Charters, Staff Director, Subcommittee on Energy and Mineral Resources. Any communication must be made in writing via email to [Tim.Charters@mail.house.gov](mailto:Tim.Charters@mail.house.gov) or fax, at (202) 225-5255, or letter to:

Chairman Doc Hastings  
Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth HOB  
Washington, D.C. 20515

ATTN: Tim Charters

Thank you in advance for your cooperation with the Committee in its review of this matter.

Sincerely,  
  
Doc Hastings  
Chairman  
Natural Resources Committee

  
Doug Lamborn  
Subcommittee Chairman  
Energy and Mineral Resources

Cc: The Honorable Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement

APR 06 2011 10:08

RECEIVED  
2011 APR -6 AM 10:30

## **What Information to Look For and Highlight When Responding to Document Requests from Congress**

Congress has significant oversight authority to review the activities of Federal agencies, including the Department of the Interior. Under this authority, Congress frequently requests all manner of documents from the Department.

There's no magic to responding to these requests, and it is a core part of your job to perform the search, correctly prepare and submit responsive documents, and to certify your search efforts as explained in **Attachment 3** to this package.

### **Your Main Task in Reviewing Potentially Responsive Documents**

Your main task is searching your files for responsive documents, reading those documents, and identifying privileged or confidential information and other agencies' "equities" (information that some agency other than DOI might be interested in) that the Department of the Interior might want to withhold from release.

Your review is a "first cut" in identifying this type of information which, when you find it, you must highlight by filling in the "review" circle on the Document Target Sheet ("bubble sheet") (as explained in **Attachment 3** to this package) and tabbing the information with Post-it Notes or some other easily identifiable method.

### **Types of Information You Must Highlight When Reviewing Documents**

Presidential Communications. This category includes emails, reports, etc. between high-ranking government officials (Department Secretaries, Deputy Secretaries, Assistant Secretaries, etc.) and advisors to the President in the Executive Office of the President or the President himself.

National Security/Diplomatic/State Secrets. You are unlikely to come across this type of information in DOI documents, but if you see something that you think might fall into this category call your solicitor.

Law Enforcement Matters. Information on pending criminal investigations or civil enforcement matters may be protected and should be flagged. This includes witness statements and reports to law enforcement officials investigating a crime as well as information on active civil enforcement actions such as natural resource damages claims.

Attorney-Client Communications. This category includes documents that reflect written or confidential matters sent to an attorney for the purpose of getting legal advice.

Attorney Work Product. This category includes materials prepared by an attorney in contemplation of litigation. Such memos, e-mails or legal opinions are often marked with words "... Attorney Work Product Prepared in anticipation of Litigation ..." or something similar.

*Deliberative Process Materials.* These are materials that capture the substance of a debate on an issue within the Department, or between the Department and other Agencies or the White House, especially at high levels. Generally, the deliberative process materials that are protected are those that show how a decision is being made; materials concerning decisions that are already made are less often the subject of withholding, but still should be flagged for review.

*Privacy Materials.* Although the Privacy Act can not be used to withhold information from Congress, some information regarding individuals reveals private details that might warrant protection. Any material that reveals information protected by the Privacy Act (social security numbers, phone numbers, addresses, etc.), medical information, and personnel actions should be flagged for attorney review.

*Privileged Trade Secrets and Commercial or Financial Information.* “Trade Secrets” are types of information, including formulae, processes or devices that are used in the manufacture or processing of goods, materials, or resources. There are many examples of such information, including certain data pertaining to oil company reservoir estimates and other aspects of oil and gas leasing and production operations, which are not releasable under Departmental regulations. Highlight all such information for review by attorneys in the Solicitor’s Office. “Privileged or Confidential Commercial or Financial Information” is a broad category of information relating to commerce or the conduct of business.

*Information protected by Other Laws.* Some statutes, such as the Archeological Resources Protection Act and the National Parks Omnibus Act, allow the Department to withhold information from the public (but not necessarily from Congress) to protect fragile or valuable cultural resources. You must highlight such information for review by an attorney from the Solicitor’s Office.

*Other Agencies’ Equities.* Information between the high-ranking officials of the Department of the Interior and other agencies, or between high-ranking officials of other agencies, should be highlighted for Solicitor’s Office Review.

#### **Whom to Ask if You Have Questions about Documents You Review**

If you have questions about information in documents you are reviewing, you should first ask your bureau or agency Senior Contact for clarification.

## **How to Prepare and Submit Documents and Search Certifications to the Document Management Unit**

If you are a Technical Contact listed in Attachment 4 of this package, follow these instructions to submit documents to the Document Management Unit.

If you fail to follow these instructions, the Document Management Unit will return the documents you submit to you to correct errors and you will have to submit the documents again.

### **How to Prepare Documents for Submission**

**Do Not** submit original documents. **Do** submit good copies only on 8 1/2 x 11 white 20 lb Xerox paper.

**Do Not** submit double-sided copies. **Do** submit only single-sided copies.

**Do Not** print an entire e-mail chain as a single document. **Do** print each new, individual e-mail separately along with all the preceding emails in the chain; each new e-mail and the preceding emails in the chain constitute one document.

**Do Not** bind documents with paper clips, staples, tape, etc. **Do** submit documents as individual sheets; this means that you must unbind notebooks, briefing binders, etc. and copy each page as instructed above.

**Do Not** submit odd-sized papers. **Do** tape odd-sized papers (receipts, ticket stubs, etc.) to an 8 1/2 x 11 inch sheet and copy as instructed above.

### **How to Fill In Batch Sheets and Document Sheets**

Completed Batch Sheets (Attachment 2a) and Document Sheets (Attachment 3b) are required to allow electronic processing of the documents you submit.

**Do Not** copy the example Batch and Document sheets at Attachments 3a and 3b. **Do** print as many of each as you need only on 20 lb Xerox paper using a high quality laser printer.

**Do Not** use a pencil to fill out the Batch and Document Sheets. **Do** use only a blue or black ink pen or marker.

### **How to Use Batch Sheets**

You must put a Batch Sheet (Attachment 3a) on top of each new *folder, group of related documents or stand-alone individual document* you submit.

- Print "Project ESO #00027094" (the number assigned by the Document Management Unit to this document production request), the name of the person who provided the folder or group of related documents and the title of the folder or group of documents on the Batch Sheet.

- The title of the folder or group of documents must describe accurately the subject or type of documents in the folder or group.

### **How to Use Document Sheets**

You must put a Document Sheet (Attachment 3b), also known as the “bubble sheet”, on top of each *individual document* you submit, regardless of whether that document is in a folder, within a related group of documents, or a single, stand-alone document. On each Document Sheet, you must:

- Fill in the circle for month, day and year for each individual document.
- Fill in the circle for only one document type for each individual document. If none of the document types apply, fill in “other”.
- Fill in the circle for the request number the document is responsive to. You can find the request number on the Search Table at Attachment X of this package.
- Print the title of the document in the space provided on the Target Sheet (For example, “Email from X to Y”; “Briefing by X for Y”).

Some documents might contain sensitive, confidential, or privileged information that attorneys in the Office of the Solicitor will need to review. If you find such information in a document, fill in the “review” circle on the Document Sheet. See Attachment 2 for an explanation of sensitive, confidential and privileged information.

### **How to Document the Search**

All employees who might have responsive documents must conduct a thorough search of their records.

Staff Certification (Attachment 5a): Staff-level employees must record the time they spent searching for, collecting, preparing and copying responsive documents, and submit their certification to their Office Supervisor.

Office Supervisor Certification (Attachment 5b): Office Supervisors collect certifications from their staff employees, calculate the time and resources their employees spent on search activities, and submit their Office Supervisor Certification to their Senior Contact.

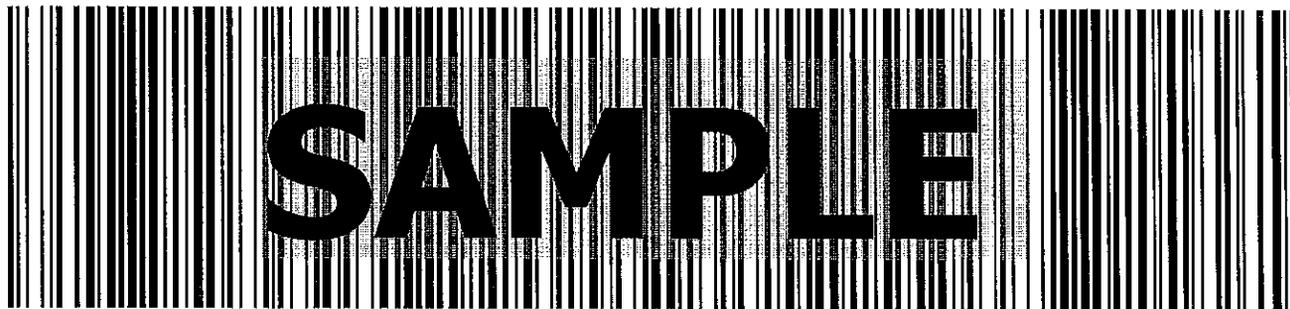
Senior Contact Certification (Attachment 5c): Senior Contacts collect Office Supervisor Certifications, calculate the time spent and resources by the organization in search activities, then submit that information to the Document Management Unit.

### **Submitting Documents to the DMU**

Prepped documents **MUST ARRIVE** at the Documents Management Unit, Room 7039 no later than **COB Wednesday, April 20, 2011**.

### **Questions About Processing Documents?**

Contact your bureau or agency Senior Contact for assistance.



a 6 7 5 4 9 d e - e 1 7 6 - 4 c 4 a - 8 c f 4 - 8 4 4 5 e e d 7 9 2 1 b

Congressional Batch Card

Project: \_\_\_\_\_

Provider's Name: **DO NOT USE**

Batch Title: \_\_\_\_\_  
\_\_\_\_\_



a 5 0 5 6 c 8 c - 7 c b c - 4 e 6 c - b a 5 b - f 3 d 3 4 6 c 9 1 a d 3

*Congressional Document Card*

REQUEST NUMBER (Choose One Only)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- Review

DOCUMENT TYPE (Choose One Only)

- Agenda
- Analysis
- Appraisal
- ArticleNews
- Audit
- BriefingPaper
- Calendar
- Contract
- CorrespondenceMemo
- CourtDecisionOpinionOrder
- Declaration
- E-mail
- Grant
- Lease
- Map
- MeetingMinutes
- MOU
- Notes
- Notice
- Other
- Proposal
- Receipt
- Regulation
- Report
- Statement
- Statue
- Subpoena
- Testimony
- Transcript
- TravelVoucherOrder

DOCUMENT DATE

- | <u>Month</u>             | <u>Day</u>                                      | <u>Year</u>  |
|--------------------------|---|--|
| <input type="radio"/> 1  | <input type="radio"/> 0 <input type="radio"/> 0 | <input type="radio"/> 18 <input type="radio"/> 0 <input type="radio"/> 0 |
| <input type="radio"/> 2  | <input type="radio"/> 1 <input type="radio"/> 1 | <input type="radio"/> 19 <input type="radio"/> 1 <input type="radio"/> 1 |
| <input type="radio"/> 3  | <input type="radio"/> 2 <input type="radio"/> 2 | <input type="radio"/> 20 <input type="radio"/> 2 <input type="radio"/> 2 |
| <input type="radio"/> 4  | <input type="radio"/> 3 <input type="radio"/> 3 | <input type="radio"/> 3 <input type="radio"/> 3                          |
| <input type="radio"/> 5  | <input type="radio"/> 4                         | <input type="radio"/> 4 <input type="radio"/> 4                          |
| <input type="radio"/> 6  | <input type="radio"/> 5                         | <input type="radio"/> 5 <input type="radio"/> 5                          |
| <input type="radio"/> 7  | <input type="radio"/> 6                         | <input type="radio"/> 6 <input type="radio"/> 6                          |
| <input type="radio"/> 8  | <input type="radio"/> 7                         | <input type="radio"/> 7 <input type="radio"/> 7                          |
| <input type="radio"/> 9  | <input type="radio"/> 8                         | <input type="radio"/> 8 <input type="radio"/> 8                          |
| <input type="radio"/> 10 | <input type="radio"/> 9                         | <input type="radio"/> 9 <input type="radio"/> 9                          |
| <input type="radio"/> 11 |   |  |
| <input type="radio"/> 12 |   |  |

DOCUMENT TITLE

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DOCUMENT PRODUCTION REQUEST CONTACTS - ESO # 00027094					
AS/ BUREAU/ OFFICE	DESIGNEE	ROOM NO.	MAIL STOP	TELEPHONE /FAX	TECHNICAL CONTACT FOR DATA ENTRY/PHONE/FAX
OS	Chris Salotti	6357		P:202-208-1403	Dominique Banks P: 202-208-4455
SOL	Richard Myers	6540		P: 202-208-4723	Marigrace Caminiti P: (202)208-4423
OSM	Mary Katherine Ishee	233 SIB		P: 202-208-3500	
ASLM	Richard Cardinale	6624		P: 202-28-7214	Pat Watkins P: 202-208-4223

I, \_\_\_\_\_ on the staff of \_\_\_\_\_, of the  
 (Name) (Office Supervisor)  
 \_\_\_\_\_ of \_\_\_\_\_ do hereby certify to the Office  
 (name of divisional, regional or field office) (bureau or office)

Supervisor, that:

1. I have reviewed the instruction memorandum and attachment pertaining to the request of April 1, 2011, by Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior’s Office of Surface Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). (ESO # 00027094)

2. I have undertaken a good faith search for all potentially responsive documents within the undersigned’s possession or control;  
**ALSO**  
 If I was assigned to search for all potentially responsive documents created or stored by a former employee, in places known by current staff of the office to be kept by the former employee, please give the former employee’s name:  
 \_\_\_\_\_

3. CHECK THE APPROPRIATE ALTERNATIVE:

I have reason to believe that the documents identified with this certification constitute (i) all documents within the possession or control of the undersigned, and/or (ii) if certifying for a former employee, all documents created or stored, and in places known by current staff to be stored, by the above named former employee.

OR

I have reason to believe that there are no potentially responsive documents (i) within the possession or control of the undersigned, or (ii) if certifying for a former employee, all documents created or stored, and in places known by current staff to be stored, and accordingly, has not identified any documents.

4. The following is information needed to calculate costs associated with my performing the search for and production of records.

Hours/grades of individuals performing work:

Grade/Step Level	Number of Hours	Hourly Rate	Total Cost

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

I, the \_\_\_\_\_ for the \_\_\_\_\_ located in  
 (insert title) (name of divisional, regional or field Office)

\_\_\_\_\_, do hereby certify to \_\_\_\_\_,  
 (city and state of divisional, regional or field office) (name of Senior Contact)  
 in his/her capacity as the Senior Contact tasked with coordinating searches for records responsive to the April 1, 2011, request from Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior’s Office of Surface Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). (ESO # 00027094)

1. I have reviewed the instruction memorandum and attachments relating to the request of April 1, 2011, by Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior’s Office of Surface Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). (ESO # 00027094)
2. I have directed every person in the office who might reasonably be believed to be a possible possessor of potentially responsive documents to conduct a search and to sign a staff certification form.
3. I have assigned staff of the office to certify that a search and submission of documents, if any, was conducted for potentially responsive documents created or stored, in places known by current staff to be stored, by former employees of the office, if any.
4. I have also searched or supervised the search for responsive documents in my possession and control.
5. **CHECK THE APPROPRIATE ALTERNATIVE:**

I have reason to believe that the documents identified with this certification constitute all documents within the possession or control of the staff in the office.

**OR**

I have reason to believe that there are no responsive documents within the possession or control of the staff in the office, and accordingly, have not identified any documents.

6. The following is information needed to calculate costs associated with performing the search for and production of documents in this office.



I, the Senior Contact in the \_\_\_\_\_ (bureau or office) tasked with coordinating searches in the bureau or office for documents potentially responsive to the request of April 1, 2011, by Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior's Office of Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). (ESO # 00027094), do hereby certify to the Office of the Executive Secretariat that:

1. I have reviewed the instruction memorandum and attachments relating to the request of April 1, 2011, by Chairman Doc Hastings and Energy & Minerals Subcommittee Chairman, Representative Doug Lamborn for documents regarding the Department of the Interior's Office of Mining, Reclamation and Enforcement rewrite of the 2008 Stream Buffer Zone Rule (Rule). (ESO # 00027094)
2. I sent an Office Supervisor Certification to, and received a completed, signed Office Supervisor Certification back from, the head of each \_\_\_\_\_ (division, regional and/or field office, as appropriate) of the Bureau or Office (collectively, Office Supervisors).
3. I asked each Office Supervisor
  - (a) to direct every staff member in his or her office who might reasonably be believed to be a possessor of potentially responsive documents to undertake a good faith search for all such potentially responsive documents within their possession or control;
  - (b) to designate staff to search for and submit documents created by former employees of this bureau or office; and
  - (c) to certify to the undersigned that he or she has reason to believe that those searches were undertaken.
4. I have received a certification from each Office Supervisor in the bureau or office. I have also searched or supervised the search for responsive documents in my possession and control.

5. **CHECK THE APPROPRIATE ALTERNATIVE:**

I have reason to believe that the documents searched for and submitted pursuant to the request. (ESO # 00027094) and this certification are all the potentially responsive documents in the possession or control of the bureau or office.

OR

I believe or have reason to believe that there are no potentially responsive documents within the possession or control of the bureau or office.

CERTIFICATION – SENIOR CONTACT

The following is the total time and cost associated with performing the search, identification and production of documents for the Bureau or Office. This amount should be calculated by totaling the amounts provided by Office Supervisors for all staff time, including their FOIA Officers and Program Attorneys.

Total Time in Hours	Total Cost

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title