

Congress of the United States

Washington, DC 20515

November 9, 2015

The Honorable Sally Jewell, Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Jewell:

On June 10, 2015, we requested 16 categories of information and documents related to possible mismanagement at the Office of Surface Mining, Reclamation, and Enforcement. As described in our original request, OSM under the leadership of Director Joseph Pizarchik has engaged in a legally questionable campaign of rewriting and abandoning well-established policies and programs that have served both OSM and States with authorized mining programs. The Department of the Interior's (DOI) July 31, 2015, response provided copies of approximately 320 documents, a large number of which were copies of court and administrative filings and other publicly available materials. Although its response promised additional documents would be provided on a "rolling basis," DOI has failed to provide any additional documents in the almost three months since the initial reply was sent.

The approximately 320 documents produced to date appear to be copies of the legal briefs, transcripts, and exhibits that DOI/OSM has maintained concerning litigation involving OSM, the Oklahoma Department of Mines (ODM) and the Farrell-Cooper Mining Company. Many of these documents are a matter of public record and several were specifically referenced by the committees' own initial letter. In fact, most of the produced materials are only tangentially related to the 16 specific document requests that were sent on June 10, 2015.

DOI's response argues that OSM has acted appropriately in changing its policies and its approach for working with States. However, the statements only serve to underscore the need for our oversight. This correspondence reiterates our expectation that OSM will provide complete and unredacted copies of the documents as outlined in our original June 10 request that will help determine whether, since 2009, the actions taken by OSM Director Pizarchik and other OSM employees have conformed to federal law. A copy of the June 10, 2015 letter is enclosed herewith. Given the considerable passage of time since the request was made and our understanding that DOI has continued to identify responsive documents in the months since its initial production, we expect DOI will be able to complete its response no later than December 4, 2015.

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The committees have identified two additional categories of documents, based on DOI's initial response, that would further our oversight interest. Accordingly, please provide the following unredacted documents and information as soon as possible, but no later than December 4, 2015:

1. All documents and communications, including but not limited to emails, memos and legal analysis exchanged between Director Pizarchik and the Office of the Solicitor regarding the overturn of the *Mettiki* decision in November 2010.
2. All documents and communications, including but not limited to emails, memos and legal analysis from Director Pizarchik which discuss the concept that INE-26 was "obsolete," and/or the reasons that it was rescinded.

Given the long-running delays in obtaining responsive records from OSM and in order to facilitate a more expedited resolution of our inquiry, the committees request that DOI make the following individuals who are expected to have direct knowledge and answers regarding this matter available for transcribed interviews with committee staff:

1. Ervin Barchenger, Regional Director, OSM Mid-Continent Region
2. Karen Hawbecker, Associate Solicitor at DOI, Office of the Solicitor
3. Michele Altemus, Chief of Staff, OSM Office of the Director

The Subcommittee on Regulatory Affairs and Federal Management (RAFM) oversees the management, efficiency, effectiveness, and economy of all federal government agencies, departments, and programs. The Subcommittee has broad oversight authority, as set forth in Senate Rule XXVI. The Committee on Oversight and Government Reform (OGR) is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter," as set forth in House Rule X. The Committee on Environment and Public Works (EPW) has broad jurisdiction over environmental policy, as set forth in Senate Rule XXV. An attachment to this letter provides additional information about responding to these requests.

Unless otherwise specified, the time period covered by this request is from November 1, 2009 to the present. Requested records, documents, data or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Subcommittee. Please deliver your responses to the RAFM Majority Staff in Room 601 of the Hart Senate Office Building and the RAFM Minority Staff in Room 605 of the Hart Senate Office Building. The Subcommittee prefers to receive all documents in electronic format.

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Thank you for your timely attention to this matter. Please contact John Cuaderes of the RAFFM staff at (202) 224-6704, or William McGrath of the OGR staff at (202) 225-5074, or Byron Brown of the EPW staff at (202) 224-6176 with any questions regarding this matter.

Sincerely,



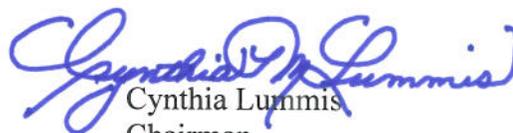
James M. Inhofe
Chairman
Senate Environment and
Public Works Committee



Jason Chaffetz
Chairman
House Oversight and
Government Reform Committee



James Lankford
Chairman
Senate Homeland Security and
Governmental Affairs
Subcommittee on Regulatory
Affairs and Federal Management



Cynthia Lummis
Chairman
House Oversight and
Government Reform Committee
Subcommittee on the Interior

Enclosure

cc: The Honorable Barbara Boxer, Ranking Minority Member
Senate Environment and Public Works Committee

The Honorable Elijah Cummings, Ranking Minority Member
House Oversight and Government Reform Committee

The Honorable Heidi Heitkamp, Ranking Minority Member
Senate Homeland Security and Governmental Affairs, Subcommittee on Regulatory
Affairs and Federal Management

The Honorable Brenda Lawrence, Ranking Minority Member
House Oversight and Government Reform Committee, Subcommittee on the Interior

Responding to RAFM Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Subcommittee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Subcommittee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Subcommittee should include the following fields of metadata specific to each document; BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

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6. Documents produced to the Subcommittee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Subcommittee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Subcommittee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from November 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Subcommittee, production sets shall be delivered to the Majority Staff in Room 601 of the Hart Senate Office Building and the Minority Staff in Room 605 of the Hart Senate Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Subcommittee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "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 in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be

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construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.