

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

October 28, 2015

The Honorable Howard Shelanski  
Administrator  
Office of Information and Regulatory Affairs  
725 17th Street, NW  
Washington, D.C. 20503

Dear Administrator Shelanski:

On July 14, 2015, the Committee issued a subpoena to you for documents related to the “Waters of the United States” rule.<sup>1</sup> To date, you have neither produced all documents responsive to the subpoena, nor invoked a valid legal privilege to justify withholding them.<sup>2</sup> Your failure to comply with the Committee’s subpoena has delayed the Committee’s investigation and thwarted the Committee’s constitutional obligation to conduct oversight of the Executive Branch. Furthermore, your failure to comply with a duly issued subpoena may expose you to civil and/or criminal enforcement mechanisms. It may also be necessary for you to appear in a transcribed setting and answer questions about the development of the Waters of the United States rule, and your unwillingness to cooperate with the congressional investigation thereof.

Deficiencies in the rule—which was reviewed by the Office of Information and Regulatory Affairs—raised questions about how the administration developed and issued it. The Committee subsequently requested documents and information that would help us understand that process. After OIRA was unwilling to provide the full evidentiary record voluntarily, the Committee issued a subpoena to compel you to provide all relevant documents and communications. Documents obtained by the Committee to date show the administration did not comply with relevant statutory and legal authorities during the rule’s development and promulgation.

So our investigation can proceed despite your unwillingness to comply in a timely manner with the subpoena you received over three months ago, the Committee will conduct transcribed interviews of OIRA staff to address questions that might otherwise be answered by the documents and communications that are being withheld. Please make Deputy Administrator Dominic Mancini, Associate Administrator Andrei Greenwalt, and Branch Chief Jim Laity available for transcribed interviews with the Committee as soon as possible, but no later than November 11, 2015.

---

<sup>1</sup> Clean Water Rule: Definition of “Waters of the United States,” 80 Fed Reg. 37,054 (June 29, 2015).

<sup>2</sup> H. Comm. on Oversight & Gov’t Reform, Subpoena to Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs (July 14, 2015).

The Honorable Howard Shelanski

October 28, 2015

Page 2

In addition, please provide the following basic information about OIRA's document production process:

1. A list of the custodians of responsive documents.
2. The total number of documents identified as potentially responsive to date.
3. The total number of documents reviewed by the Office of Management and Budget (OMB).
4. The total number of documents sent to the White House for review.
5. The total number of documents withheld by OMB, in whole or in part.
6. The reasons why each document or portion of a document has been withheld, including a description of any redactions applied to the document, and whether OMB, the White House, or another federal agency applied the redactions.
7. An estimated date by which OMB's production of unredacted, responsive documents to the Committee will be complete.

The Committee on Oversight and Government Reform 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.

Please contact Christina Aizcorbe of the Committee staff at (202) 225-5074 with any questions about this request, or to make arrangements for transcribed interviews. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman



Mark Meadows  
Chairman  
Subcommittee on  
Government Operations



Jim Jordan  
Chairman  
Subcommittee on Health Care,  
Benefits and Administrative Rules



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

The Honorable Howard Shelanski

October 28, 2015

Page 3

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Gerald E. Connolly, Ranking Member  
Subcommittee on Government Operations

The Honorable Matt Cartwright, Ranking Member  
Subcommittee on Health Care, Benefits and Administrative Rules

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

The Honorable Harold Rogers, Chairman  
Committee on Appropriations

## Responding to Committee 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 Committee.
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 Committee'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 Committee 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.
6. Documents produced to the Committee 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 Committee'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 Committee 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 January 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 Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House 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 Committee.

### **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 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.