

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 18, 2016

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

Dear Administrator Shelanski:

For more than a year, the Committee has sought documents related to the Office of Information and Regulatory Affairs' role in the promulgation of the Waters of the United States (WOTUS) rule. Since the Committee's first request for documents and information, you have obstructed the investigation by refusing to provide documents, failing to identify key officials who reviewed the rule, and delaying transcribed interviews. Of the documents you did provide, many were already publicly available, duplicates, or both.

Your failure to comply with the Committee's request for documents and information, and subsequent subpoena, has delayed the congressional investigation of the controversial WOTUS rulemaking process. As you know, WOTUS expands the Clean Water Act's purview and raises enforcement concerns, as well as state sovereignty considerations. In March 2016, the U.S. Court of Appeals for the Sixth Circuit said it will hear arguments on the legality of WOTUS, and left in place a nationwide stay against enacting the rule.

Your actions are delaying and otherwise impeding the Committee's ability to perform its Constitutional oversight duties. Because you and your staff have willfully failed to comply with the Committee's subpoena, or to demonstrate a modicum of good faith with respect to searching for and producing responsive documents, it will likely be necessary to enforce the subpoena pursuant to 2 U.S.C. § 192.

**I. Obstruction by Failing to Produce Subpoenaed Documents**

You have failed to provide subpoenaed documents to the Committee for more than a year. Further, you and your staff testified at Committee hearings about your intentions, specifically, that you do not plan to comply with the legal obligation imposed by the Committee's subpoena.

**A. March 3, 2015, Government Operations Subcommittee Hearing**

The Committee first requested documents related to the WOTUS rulemaking from you on March 3, 2015, at a joint Subcommittee hearing titled “Challenges Facing OIRA in Ensuring Transparency and Effective Rulemaking.” You were the only witness. During the hearing, members of the Committee requested documentation regarding the review of the WOTUS rulemaking. You initially claimed all of the documentation was publicly available. You testified:

**Mr. DesJarlais:** Can you provide this Committee with documentation relating to OIRA’s oversight of this rule, including the rule’s designation as significant and certification under the Regulatory Flexibility Act?

**Mr. Shelanski:** So all of the documentation related to a rule is actually on our website and through the website RegInfo.gov. So when a rule comes in, it becomes public that it is with OIRA; its designation at that point similarly becomes public. So when the final rule comes in, that will be publicly visible, both the timing of the arrival and the designation that it receives.<sup>1</sup>

Later in the hearing, you explained to Subcommittee Chairman Mark Meadows that OIRA treats requests from Congress the same as requests from the general public. You also made clear you consider OIRA’s discussions about the rule part of the deliberative process and would not be making those available to Congress. You testified:

**Mr. Meadows:** Let me ask a clarifying point before I recognize the ranking member, because your testimony right now says that all those documents and all of that as it relates to your review of that is online. I don’t believe that that is correct; and that is what the gentleman was asking. So maybe your answer didn’t match his question.

**Mr. Shelanski.** No, what I meant to say is the fact that a rule is with us under review and the designation –

**Mr. Meadows:** So what about in the interim process? You have been involved in the interim process with the Waters of the U.S., have you not?

**Mr. Shelanski:** Right.

**Mr. Meadows:** So where is that documentation?

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<sup>1</sup> *Challenges Facing OIRA in Ensuring Transparency and Effective Rulemaking: Hearing Before the H. Comm. on Oversight & Gov’t Reform, 114th Cong. (May 3, 2015) (statement of Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs).*

**Mr. Shelanski:** So what we do at the end of a review process is the agency, and the EPA does this, makes available both the rule as it came in and the rule as changed after it finished the review process.

**Mr. Meadows:** I will wait to my line of questioning. That doesn't answer the question, because when you have the initial rule and the final rule, there is a whole lot of the story that happens in between that we are not privy to your involvement there. Where is that documentation? Where is the transparency, I guess?

**Mr. Shelanski.** So there is a deliberative process that is undertaken, discussions not just between OIRA and the agency, but there is an interagency review process in which agencies are –

**Mr. Meadows:** Right. We are well aware of that. I guess what I am saying is his question was specifically with regards to the information, the audit trail, so to speak, of your involvement. Where are those documents?

**Mr. Shelanski.** There is not a set of documents.

**Mr. Meadows:** So you don't document it.

**Mr. Shelanski.** No, we do not.

**Mr. Meadows:** You just get involved and have verbal conversations?

**Mr. Shelanski:** There is a lot of verbal conversation, there is a lot of discussion, and then there is a written pass-back, back and forth that goes on between the agencies.

**Mr. Meadows:** All right, so let's say the emails. Where are those emails? Can you provide those specifically with regards to that particular, your analysis and your interrogatory with them? Can you provide that to the committee?

**Mr. Shelanski.** We do not make public --

**Mr. Meadows:** We are not public. You want to make that to us?

**Mr. Shelanski.** With all respect, sir, with respect to the rulemaking process, we do not divulge parts of the deliberative process outside the office.

**Mr. Meadows:** But you are not part of the deliberative process; you are part of the analysis, according to the statute.

**Mr. Shelanski:** But what you are asking for is the deliberative process that we engage in.<sup>2</sup>

On May 12, 2015, the Committee sent a letter reiterating its request for information related to the rulemaking. Specifically, the letter stated:

We reiterate our request for documents and information to assist the Committee's oversight of OIRA and the development of the proposed regulation. Please provide all documents and communications referring or relating to the proposed regulations as soon as possible, but no later than 5:00 p.m. on May 25, 2015. This request includes, but is not limited to, the time period prior to the proposed rule's submission for review under Executive Order 12866.<sup>3</sup>

The Committee's letter stated it "will consider the use of compulsory process to obtain these documents if you continue to refuse to produce them voluntarily."<sup>4</sup>

### **B. July 14, 2015, Subpoena**

Due to your failure to voluntarily comply with the Committee's request, a subpoena was served on July 14, 2015. The subpoena covers one category of documents:

All documents and communications referring or relating to the Environmental Protection Agency (EPA) and the U.S. Department of the Army (Army) rule defining the scope of waters protected under the Clean Water Act.

Over the course of three months after the subpoena was issued, you and your staff failed to make a meaningful production of responsive documents, or even to make a good faith effort to engage in the accommodations process. In an effort to better understand the difficulties you were having in gathering responsive documents and otherwise fully complying with the subpoena, the Committee sent a letter to you on October 28, 2015. The letter requested interviews with the custodians of responsive documents that OIRA previously identified to the Committee, and asked for basic information related to the document production process. Specifically, the letter requested:

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<sup>2</sup> *Id.*

<sup>3</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs (May 12, 2015).

<sup>4</sup> *Id.*

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; and
7. An estimated date by which OMB's production of unredacted, responsive documents to the Committee will be complete.<sup>5</sup>

The Committee requested a response by November 11, 2015. You have chosen, however, not to respond at all. In fact, your staff has repeatedly refused to provide even the most basic information about OIRA's search for responsive documents.

### **C. The January 7, 2016, Committee Hearing**

In an effort to better understand why your agency had not provided documents in response to the subpoena, the Committee held a hearing on January 7, 2016. Ms. Tamara Fucile, Associate Director of Legislative Affairs for the Office of Management and Budget, testified.<sup>6</sup> Her invitation to testify made clear she was expected to answer questions related to OIRA's response to the Committee. Specifically, it stated:

The hearing will specifically address the agency's response to the Committee's March 3, 2015, request and subsequent July 14, 2015, subpoena for documents pertaining to the Office of Information and Regulatory Affairs' review of the Waters of the United States rulemaking.<sup>7</sup>

When asked, however, she was unable to provide basic information about OIRA's production. She could not confirm the names or the number of custodians whose emails were searched. Rep. Lummis asked: "How many custodians have you identified?" Ms. Fucile responded: "I don't have that information. I'd have to take that back."<sup>8</sup>

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<sup>5</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs (Oct. 28, 2015).

<sup>6</sup> *Document Production Status Update: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (Jan. 7, 2015) (statement of Ms. Tamara Fucile, Assoc. Dir. for Leg. Affairs, Office of Info. and Regulatory Affairs). [hereinafter Jan. 7, 2015 Hearing]

<sup>7</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. On Oversight & Gov't Reform, to Ms. Tamara Fucile, Assoc. Dir. for Leg. Affairs, Office of Info. and Regulatory Affairs (Dec. 18, 2015).

<sup>8</sup> Jan. 7, 2015 Hearing, *supra* note 6.

Neither could Ms. Fucile provide an estimate of the number of potentially responsive documents identified by OIRA to date, nor confirm OIRA would provide all documents responsive to the subpoena. In fact, Ms. Fucile refused to commit to providing all of the responsive documents. She testified:

**Chairman Chaffetz.** Are you committed to providing all of those documents?

**Ms. Fucile.** We are committed to providing the committee the information that it needs. We are --

**Chairman Chaffetz.** Well, we determine what we need, so the question is, are you going to provide all the documents?

**Ms. Fucile.** We're -- we certainly --

**Chairman Chaffetz.** That isn't a simple yes. You can't say yes to that?

**Ms. Fucile.** We're committed to getting the committee the information it requested. We certainly are committed to going through all of those documents. There is a process that is a longstanding practice between this administration, other administrations to make sure that the documents are relevant, to make sure that the documents adhere to privacy concerns. All the information we've given you so far has been complete without redactions. We're committed to continuing this process.

**Chairman Chaffetz.** I want to know if you're committed to giving us all the documents, yes or no?

**Ms. Fucile.** We are committed to getting you the information that you need and producing documents and continuing to produce documents and to working with you on that.

**Chairman Chaffetz.** Why can't you just say yes or no? Are you going to give us all the documents we asked for, yes or no?

**Ms. Fucile.** Part of the problem is I personally don't know what the universe of all the documents is. I -- we are committed to getting you the documents.

**Chairman Chaffetz.** When?

**Ms. Fucile.** We are -- have increased our production and response rate. I expect that will continue --

**Chairman Chaffetz.** Well, you had enough information that you actually produced a rule, so why can't you provide those underlying documents to Congress?

**Ms. Fucile.** The -- as the Congresswoman pointed out, this rule is under litigation. That increases the amount of work that needs to go done -- be done in terms of producing documents. We are committed. We -- I expect that we will be able to continue to produce documents, that we will be able to produce documents this month -- or next month by -- in short order, you know, and we're committed to work with your staff on that.

**Chairman Chaffetz.** When is it reasonable to give us the -- what date? I am looking for a date.

**Ms. Fucile.** I can't give you a date certain because the breadth of the subpoena is so broad, but I can commit that within the next month we will produce more documents.

**Chairman Chaffetz.** Wow. This is what we are up against.<sup>9</sup>

#### **D. March 15, 2016, Government Operations Subcommittee Hearing**

To further understand OIRA's involvement in the rulemaking process, the Subcommittee on Government Operations held a hearing on March 15, 2016, titled "Accountability and Transparency Reform at the Office of Information and Regulatory Affairs." You appeared as a witness at the hearing.<sup>10</sup>

When you were questioned directly about your obligation to comply with the subpoena, you responded: "I believe it is my duty to turn over all documentation to our General Counsel's Office and our Legislative Affairs Office that is currently engaged in the process of producing documents and witnesses for you."<sup>11</sup> After additional questions, you made clear, "I am not personally involved."<sup>12</sup>

As recently as May 13, 2016, during a transcribed interview with Committee staff, you confirmed again that you have had limited, if any involvement in the process to respond

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<sup>9</sup> *Id.*

<sup>10</sup> *Accountability and Transparency at the Office of Information and Regulatory Affairs: Hearing Before the H. Subcomm. on Gov't Operations, 114th Cong. (Mar. 15, 2016) (statement of Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs).*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

to the subpoena. Despite the Committee's repeated requests for basic details about the status of the search for responsive documents, you have remained uncurious about how the agency's lawyers are handling this matter.

As the head of OIRA, you are solely responsible for responding to the subpoena, which exclusively covers documents in the custody and control of OIRA. In fact, the subpoena has your name on it, and you are the only OIRA official who is currently exposed to criminal prosecution for failing to comply. Therefore, your conduct and testimony are wholly inadequate.

#### **E. April 19, 2016, Committee Hearing**

When the Committee held its second document production hearing on April 19, 2016, you were invited to explain why you had not complied with the Committee's subpoena. Specifically, you were asked to testify about:

OIRA's lack of responsiveness regarding the Committee's request for information about the OIRA's review of the Waters of the United States rulemaking through the Committee's March 3, 2015, hearing; May 12, 2015, letter; July 14, 2015, subpoena for documents; and October 28, 2015, letter requesting transcribed interviews and information about OIRA's effort to respond to the subpoena.<sup>13</sup>

You were also asked to "be prepared to answer questions posed by Members, such as questions relating to the search and review efforts to comply with the Committee's subpoena, including the information requests posed in the October 28, 2015, letter."<sup>14</sup> The day of the hearing, you were not prepared to answer questions on topics the Committee explicitly asked you to be prepared to discuss. You were also unwilling to commit to fully complying with the subpoena. You testified:

**Chairman Chaffetz.** Mr. Shelanski, I want to start with you. On March 3, 2015, our colleague here, Mr. Meadows of North Carolina, asked you some questions regarding the Waters of the United States and made a request for documents. Correct?

**Mr. Shelanski.** I believe that is correct, yes.

**Chairman Chaffetz.** May 12, 2015, the committee issued you a letter requesting information regarding the Waters of the United States. Correct?

**Mr. Shelanski.** I believe that is correct, yes.

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<sup>13</sup> Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs (Mar. 18, 2015).

<sup>14</sup> *Id.*

**Chairman Chaffetz.** On July 14, 2015, I issued a subpoena from this Committee to you and the Office of Information and Regulatory Affairs. Correct?

**Mr. Shelanski.** Yes, sir.

**Chairman Chaffetz.** You received that subpoena. Correct?

**Mr. Shelanski.** Yes, sir.

**Chairman Chaffetz.** Did you understand the subpoena?

**Mr. Shelanski.** Yes, sir.

**Chairman Chaffetz.** Was there any ambiguity about the subpoena?

**Mr. Shelanski.** It was a very broad subpoena, but I understood the subpoena.

**Chairman Chaffetz.** The subpoena right here, one sentence essentially in terms of the schedule: all documents and communications referring or relating to the Environmental Protection Agency and the U.S. Department of Army rule defining the scope of the waters protected under the Clean Water Act.

Is there anything that you didn't understand about that?

**Mr. Shelanski.** No, sir.

**Chairman Chaffetz.** What percentage of the documents in your agency have been provided to this committee?

**Mr. Shelanski.** I don't know what the exact percentage is, in part because the subpoena goes back 9 years to June of 2006, and so I don't know what the full volume of documents ultimately would be. I do know that we have turned over a large number of documents, documents that we have prioritized the review of pursuant to counsel from your staff.

**Chairman Chaffetz.** Why should we settle for anything less than 100 percent?

**Mr. Shelanski.** We agree that you should receive the information that you need for your oversight review, and that is why we have continued to review and work through our documents as quickly as we can in response to your request.

**Chairman Chaffetz.** Do you believe we should get 100 percent of the documents?

**Mr. Shelanski.** I believe you should get all of the documents that are responsive to your request.<sup>15</sup>

While you, on one hand profess to understand your obligation to comply with the subpoena, on the other hand, you refuse to acknowledge the Committee is entitled to receive all responsive documents. Instead, you continue to insist on withholding certain responsive documents you have determined are not of interest to the Committee. Your testimony—that the Committee should “receive the information that you need for your oversight review”—implies you are substituting your judgment for the Committee’s with respect to identifying the documents and information we need to complete our investigation.

#### **F. OIRA has Failed to Produce Subpoenaed Documents**

In response to the Committee’s subpoena, you failed to provide even a meaningful subset of responsive documents. To date, OIRA has made eight limited productions to the Committee from only a six month period (of the six year rulemaking process). Of the 7,623 pages produced to date, 73 percent (or 7,699 pages) of those are duplicates, including 23 copies of the rule itself and six copies of the rule’s economic analysis. Further, 990 pages of the documents produced to date are already publicly available.

A review of the documents you produced shows a number of responsive and relevant documents exist, and continue to be withheld from the Committee, including:

- Feedback from Department of Agriculture senior policy staff regarding the interpretative rule;<sup>16</sup>
- The WOTUS regulatory impact analysis;<sup>17</sup>
- A September 17, 2013, version of the rule originally circulated for interagency review;<sup>18</sup>

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<sup>15</sup> *Document Production Status Update Part II: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. (Apr. 19, 2016) (statement of Hon. Howard Shelanski, Administrator, Office of Info. and Regulatory Affairs).

<sup>16</sup> Email from Gregory Peck, EPA, to Jim Laity, OIRA (Dec. 31, 2013, 03:11 P.M. EST) (“I’d like to wait just a little longer on the Interpretive Rule so we can get feedback from USDA senior policy staff.”).

<sup>17</sup> Email from Arvin R. Ganesan, EPA, to Andrei Greenawalt, OIRA, and Dominic Mancini, OIRA, (May 24, 2014, 07:23 EST) (OMB-002416) (“Are you able to have a conversation today about the WOTUS RIA and follow up from the meeting with the Administrator and Howard?”).

<sup>18</sup> Email from Jim Laity, OIRA, to Anne MacMillan, USDA, Kathryn Thomson, DOT, Elizabeth Kohl, DOI, Jonathan Levy, DOE, and Eric Gormsen, DOJ (Jan. 29, 2014, 08:13 P.M. EST) (OMB-002431) (“Your agency commented on an earlier draft that was initially circulated for review on September 17, 2013”); Email from Jim Laity, OIRA, to Anne MacMillan, USDA, Kathryn Thomson, DOT, Elizabeth Kohl, DOI, Jonathan Levy, DOE, and Eric Gormsen, DOJ (Jan. 29, 2014, 08:13 P.M. EST) (OMB-002431).

- A version of the rule that incorporated certain revisions;<sup>19</sup>
- Emails to OIRA staff at 8:40 p.m. on March 23, 2014, which contained a final version of the rule;<sup>20</sup>
- Communications between OIRA staff and staff from the Small Business Administration regarding comments on WOTUS rule;<sup>21</sup>
- Emails with input from the former OIRA Administrator and current Deputy Administrator;<sup>22</sup>
- Emails from Mike Fitzgerald;<sup>23</sup>
- Jim Laity's comments on December 6, 2013, regarding the draft rule;<sup>24</sup>
- Gregory Peck's edits and "minor tweaks" to "Option 3";<sup>25</sup>
- Feedback from Department of Justice officials regarding the draft rule, which caused revisions to the rule by the Environmental Protection Agency;<sup>26</sup>
- Comments by Army Corps of Engineers officials on the rule;<sup>27</sup>

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<sup>19</sup> Email from Ken Kopocis, EPA, to Andrei Greenawalt, OIRA, and Arvin Ganesan, EPA, with Jim Laity, OIRA, and Dominic Mancini, OIRA (Mar. 19, 2014, 07:34 P.M. EST) (OMB-003206) ("Attached is the entire document in track changes. The other waters language sent earlier is incorporated and the old language is struck out.").

<sup>20</sup> Email from Gina McCarthy, EPA, to Howard Shelanski, OIRA (May 24, 2014, 07:23 EST) ("The final version went to your folks at 8:40 last night. I will get my eyes on it for a final look in a few.").

<sup>21</sup> Email from Jim Laity, OIRA, to Gregory Peck, EPA (Nov. 27, 2013, 12:49 A.M. EST) ("I will offer SBA the opportunity to make comments (we might have some too) and try to convince them this is a good way forward.").

<sup>22</sup> Email from Gregory Peck, EPA, to Jim Laity, OIRA (Nov. 26, 2013, 1:15 P.M. EST) ("Here's the scanned e-mails I mentioned that includes input from Cass and Dom.").

<sup>23</sup> Email from Gregory Peck, EPA, to Jim Laity, OIRA (Nov. 26, 2013, 11:01 A.M. EST) ("Here's a set of emails starting with Mike Fitzgerald. I'll find a couple more.").

<sup>24</sup> Email from Jim Laity, OIRA, to Craig Schmauder, Army (Dec. 6, 2013, 07:01 P.M. EST) (OMB-000823) ("Craig, Thought I sent u my comments just now but I'm not seeing them in my send box. Unfortunately, I've left the office. Did u receive."); *See also*, email from Craig Schmauder, Army, to Jim Laity, OIRA (Dec. 6, 2014, 07:06 P.M. EST) (OMB-000823) ("Yes I received them.").

<sup>25</sup> Email from Gregory Peck, EPA, to Jim Laity, OIRA (Jan. 30, 2014, 10:19 A.M. EST) (OMB-000847) ("Off the record – I pasted your suggested edits into the current version of Option 3, and made some minor tweaks that I hope you are comfortable with. Before I talk with our senior policy folks, wanted to see if this would work for you?"); *See also*, email from Jim Laity, OIRA, to Gregory Peck, EPA (Jan. 30, 2014, 2:26 P.M. EST) (OMB-000847) ("Thx Greg, we can discuss tomorrow.").

<sup>26</sup> Email from Gregory Peck, EPA, to Jim Laity, OIRA (Feb. 11, 2014, 11:49 A.M. EST) (OMB-000860) ("We're making edits now based on DOJ comments and revisions to upload ditches and the "other waters" options.").

<sup>27</sup> Email from Jim Laity, OIRA, to Gregory Peck, EPA (Feb. 24, 2014, 10:03 A.M. EST) (OMB-000874) ("Corps told me they were sending comments but I haven't received any. They probably figured I already them from Craig.").

- An attachment to an email containing comments by Jim Laity from February 18, 2014,<sup>28</sup> and
- An attachment to an email containing a public comment letter from the Small Business Administration's (SBA's) Office of Advocacy related to the rule.<sup>29</sup>

These documents are clearly responsive to the subpoena. There is no ambiguity. They are required to be produced immediately to the Committee, along with all other responsive documents.

## II. Obstruction through Custodian Selection

You also obstructed the Committee's investigation by excluding key custodians of responsive documents from OIRA's search process. Despite numerous requests, OIRA failed to identify five key custodians who were involved in reviewing the rule. The Committee only learned of four of these individuals during transcribed interviews with OIRA staff, more than one year after the Committee's initial request for information from the agency.

In June 2015, the agency's woefully inadequate document productions caused the Committee to request basic information about the custodians whose emails OIRA planned to search. The quality and quantity of the agency's document productions did not improve, and Committee staff met with OIRA on January 29, 2016, to try to determine why. During the meeting, agency staff informed the Committee they had limited their review for responsive documents to the period from September 17, 2013, to March 24, 2014. Agency staff further advised they were only searching the records of four people: Dominic Mancini, Andrei Greenawalt, James Laity, and you. The agency staff were unable to confirm the search for responsive documents from this very limited period for those four custodians was complete—more than six months after the subpoena was issued. They were also unwilling to identify the volume of documents the agency's search turned up, despite repeatedly claiming the Committee's subpoena was overly broad.

The Committee soon learned, however, the four custodians whose emails were being searched were not the only OIRA officials who worked on WOTUS. During transcribed witness interviews, Committee investigators identified several other key OIRA officials who were involved in reviewing WOTUS. On February 16, 2016, Committee staff identified two new custodians with primary responsibility for reviewing the rule—Vlad Dorjets and Stuart Levenbach—and asked why OIRA had not previously disclosed the roles of these two

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<sup>28</sup> Email from Jim Laity, OIRA, to Gregory Peck, EPA, and Craig Schmauder, Army (Feb. 26, 2014, 07:59 P.M. EST) (OMB-000877) ("In the interest of time, I have not reviewed the Corps comment that I received Friday. Ideally I would do this, but I know you need it asap."); *See also, id.*, "Attachments: WOTUS 2-18-14 compare jl.docx."

<sup>29</sup> Email from Kia Dennis, Office of Advocacy, SBA, to Vlad Dorjet, OIRA (Apr. 20, 2015, 08:15 A.M. EST) (OMB-005080) ("We reiterate everything that we've stated previously and I have attached our public comment to this e-mail.").

The Honorable Howard Shelanski

May 18, 2016

Page 13

witnesses.<sup>30</sup> Your staff did not provide an explanation as to why they excluded key witnesses from the search for responsive records.

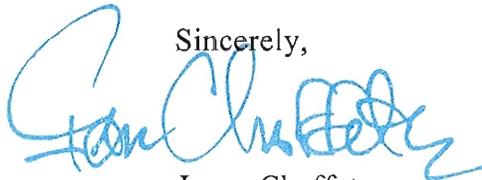
On February 17, 2016, OIRA staff confirmed they would begin searching for Mr. Dorjets' and Mr. Levenbach's records "with a focus on September 17, 2013, to March 24, 2014," but again refused to provide basic information about the ongoing effort to produce documents from the time period for the four custodians who had been previously identified.<sup>31</sup>

In subsequent transcribed interviews, the Committee obtained the names of additional OIRA officials who worked on the WOTUS rulemaking, but were excluded from the agency's search for responsive documents. On March 8, 2016, Committee staff learned about Courtney Higgins, a desk officer who was responsible for reviewing the rule.<sup>32</sup> On April 15, 2016, Committee staff learned about Amanda Thomas, the senior economic analyst who reviewed the rule.<sup>33</sup> On April 26, 2016, OIRA produced documents that identified yet another key witness involved in the rulemaking: Katie Johnson.<sup>34</sup> Had the Committee not identified these witnesses during its investigation, it is likely OIRA would never have produced their documents and communications, despite being responsive to the subpoena.

In sum, you and your staff sought to obstruct the Committee's investigation by failing to identify OIRA officials involved in reviewing the WOTUS rulemaking. Until all responsive documents are produced from all custodians who worked on the WOTUS rule, your response to the subpoena issued to you by this Committee will be deficient.<sup>35</sup>

If you have any questions, please contact Christina Aizcorbe of the Committee staff at (202) 225-5074.

Sincerely,



Jason Chaffetz  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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<sup>30</sup> Email from H. Comm. on Oversight & Gov't Reform staff to OIRA staff (Feb. 16, 2016, 10:24 A.M.).

<sup>31</sup> Email from OIRA staff to H. Comm. on Oversight & Gov't Reform staff (Feb. 17, 2016, 6:12 P.M.).

<sup>32</sup> H. Comm. on Oversight & Gov't Reform, Transcribed Interview of James Laity, Tr. at 18 (Mar. 8, 2016).

<sup>33</sup> H. Comm. on Oversight & Gov't Reform, Transcribed Interview of Dominic Mancini, Tr. at 39 (Apr. 15, 2016).

<sup>34</sup> Letter from Ms. Tamara Fucile, Assoc. Dir. of Leg. Affairs, Office of Mgmt. & Budget, to Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 7, 2016).

<sup>35</sup> 2 U.S.C. §192.