

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>

August 4, 2016

The Honorable Neil Kornze
Director
U.S. Bureau of Land Management
1849 C Street NW, Room 5665
Washington, D.C. 20240

Dear Director Kornze:

On October 2, 2015, the Bureau of Land Management (BLM) California State Office issued a decision regarding the Cadiz Valley Water Conservation Recovery and Storage Project's use of a right-of-way on BLM land pursuant to the General Railroad Right-of-Way Act of 1875. For years, the Act has been interpreted to allow railroads to extend rights-of-way to third parties on BLM land without prior authorization from the agency,¹ until a November 4, 2011, memorandum from the Department of the Interior Office of the Solicitor changed this interpretation.² After the memorandum, in order for a third party to obtain a railroad right-of-way, the proposed use must advance a railroad purpose.³ In its recent decision concerning the Cadiz project, BLM decided that the project did not "originate from a railroad purpose" despite the fact that the project brought recognizable benefits to the railroad.⁴

The Committee is concerned that the November 4, 2011, memorandum may have been specifically drafted for the purpose of denying a permit to the Cadiz project. Documents obtained by the Committee also raise concerns about the level of coordination between BLM and private interests with respect to the Cadiz decision.

Emails obtained by the Committee show a Realty Specialist in BLM's California State office regularly communicated with an employee at Whetstone Capital Advisors, LLC about the Cadiz Project and the right-of-way authorization process it was unfolding.⁵ Cadiz Inc. is a publicly traded company, and the permit decision would affect the company's financial outlook.

¹The General Railroad Right of Way Act of 1875 (Mar 3, 1875), ch. 152, 18 Stat. 482.

²Memorandum from the Dep't of the Interior Office of the Solicitor to BLM, "Partial Withdrawal of M-36964-Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way" (Nov. 4, 2011).

³*Id.*

⁴Letter from James Kenna, CA State Dir., BLM, to Jason Perry, Genesse & Wyoming Inc. and Scott Slater, Cadiz, Inc. (Oct. 2, 2015).

⁵Email from Mr. Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Sept. 23, 2014).

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Whetstone is a “Kansas City-based value oriented investment manager,” according to the fund’s website.⁶ Specifically, the emails show the BLM Realty Specialist shared information related to the potential approval of the Cadiz project with Whetstone.⁷ He also shared information from a meeting of senior BLM officials regarding the Department’s evaluation of the project,⁸ and his opinions on how the project was progressing.⁹

The emails obtained by the Committee raise questions about BLM’s decision-making process with respect to the Cadiz project. The emails also implicate executive branch ethics guidelines, including Executive Order 12731 which states, “Employees shall act impartially and not give preferential treatment to any private organization or individual.”¹⁰ E.O. 12731 also states, “Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.”¹¹

To help the Committee understand the Department’s decision on the Cadiz project, please provide the following documents and information:

1. All documents and communications between any Bureau of Land Management employee and any employee of Whetstone Capital, since June 1, 2014.
2. All documents and communications to or from any employee of the Bureau of Land Management, since June 1, 2014, referring or relating to:
 - a. Whetstone Capital;
 - b. the partial withdrawal of M-36964 by the Department of the Interior Office of the Solicitor;
 - c. The Cadiz Valley Water Conservation Recovery and Storage Project; and
 - d. The railroad purpose of the Cadiz Valley Water Conservation Recovery and Storage Project.

Please provide the requested information as soon as possible, but no later than by 5:00 p.m. on August 18, 2016.

⁶ Whetstone Capital Advisors, LLC website, *available at* <http://whetstone-capital.com/home>.

⁷ Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (June 18, 2015).

⁸ Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Sept. 23, 2015).

⁹ Email from Erik Pignata, Realty Specialist, BLM, to Thomas McGannon, Whetstone Capital (Oct. 1, 2015).

¹⁰ U.S. Office of Govt. Ethics, “Executive Order 12731 of October 17, 1990 Principles of Ethical Conduct for Government Officers and Employees,” *available at* [https://www2.oge.gov/Web/OGE.nsf/All%20Documents/25792F3D2FF647AF85257E96006A90F1/\\$FILE/f69da5359a134002808b96ca703cc4692.pdf?open](https://www2.oge.gov/Web/OGE.nsf/All%20Documents/25792F3D2FF647AF85257E96006A90F1/$FILE/f69da5359a134002808b96ca703cc4692.pdf?open).

¹¹ *Id.*

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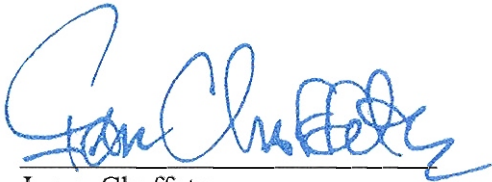
Additionally, please make Mr. Erik Pignata, BLM Realty Specialist, available for a transcribed interview as soon as possible, but no later than August 18, 2016.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

When producing documents to the Committee, please deliver production sets 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. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

Please contact Melissa Beaumont of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Cynthia M. Lummis
Chairman
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

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

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,
SENTHOUR, 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.