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5 COMMITTEE ON OVERSIGHT AND

6 GOVERNMENT REFORM,

7 U.S. HOUSE OF REPRESENTATIVES,

8 WASHINGTON, D.C.

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12 INTERVIEW OF: NANCY STONER

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Thursday, July 21, 2016

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Washington, D.C.

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23 The interview in the above matter was held at 6410

24 O'Neill House Office Building, commencing at 10:06 a.m.

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1 Appearances:

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5 For COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

6

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14 For WITNESS NANCY STONER

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1           Mr. Skladany. This is a transcribed interview of Nancy  
2 Stoner.

3           Chairman Chaffetz has requested this interview as part  
4 of the committee's investigation of the promulgation of the  
5 Waters of the United States rule.

6           Would the witness please state your name for the  
7 record.

8           Ms. Stoner. Nancy Stoner.

9           Mr. Skladany. Thank you. On behalf of the committee,  
10 I want to thank you for appearing here today to answer our  
11 questions and the Chairman also appreciates your willingness  
12 to appear voluntarily.

13           My name is Jon Skladany, I'm with Chairman Chaffetz'  
14 staff, and I will have my colleagues from the committee,  
15 here at the table, introduce themselves as well, please.

16           Mr. Hambleton. Ryan Hambleton, Majority Staff.

17           Mr. McGrath. Bill McGrath with the Majority Staff.

18           Mr. Longani. Kapil Longani with Minority Staff.

19           Mr. Burns. Sean Burns from Minority Staff.

20           Mr. Bardo. Jack Bardo from the Minority Staff.

21           Mr. Coburn. And I'm Barry Coburn, Counsel to Nancy  
22 Stoner.

23           Mr. Skladany. Thanks everybody. I will go over the  
24 ground rules and guidelines that we will follow during  
25 today's interview.

1           Our questioning will proceed in rounds. The Majority  
2 will ask questions first for one hour, and then the Minority  
3 Staff will have an opportunity to ask questions for an equal  
4 period of time if they so choose, and we will alternate back  
5 and forth that way until there are no more questions, and  
6 then the interview is over.

7           Typically we take a short break at the end of each  
8 hour, but if you would like to take a break apart from that,  
9 please just let us know.

10          As you can see, there's an official reporter taking  
11 down everything we say to make a written record. So we ask  
12 that you give verbal responses to all questions.

13          Do you understand that?

14          Ms. Stoner. Yes.

15          Mr. Skladany. Thank you.

16          So the court reporter can take down a clear record, we  
17 will do our best to limit the number of people directing  
18 questions at you during any given hour to just the people on  
19 the staff whose turn it is.

20          Please try to speak clearly so the court reporter can  
21 understand and so the folks down at the end of the table can  
22 also hear you. And it is important that we don't talk over  
23 one another or interrupt each other if we can help it.

24          We encourage witnesses who appear before the committee  
25 to freely consult with counsel if they so choose, and you

1 are appearing here today with counsel. Counsel has already  
2 introduced himself for the record.

3 We want you to answer our questions in the most  
4 complete and truthful manner possible, so we will take our  
5 time. If you have any questions, or if you do not  
6 understand one of our questions, just let us know.

7 Our questions will cover a wide range of topics, so if  
8 you need clarification at any point, just say so.

9 If you honestly don't know the answer to a question or  
10 do not remember, it is best not to guess. Please just give  
11 us your best recollection, and it is okay to tell us if you  
12 learned information from someone else; just say how you came  
13 to know the information.

14 If there are things you don't know or can't remember,  
15 just say so, and please inform us who, to the best of your  
16 knowledge, might be able to provide a more complete answer.

17 You should also understand that although this interview  
18 is not under oath, that by law, you are required to answer  
19 questions from Congress truthfully.

20 Do you understand that?

21 Ms. Stoner. I do.

22 Mr. Składany. And this applies to questions posed by  
23 Congressional Staff in an interview. Do you understand  
24 that?

25 Ms. Stoner. Yes.



1 What was your most recent role with EPA?

2 A I was the -- well let's see. Just before I left  
3 EPA which was August of 2014, the Vacancies Act kicked in  
4 and I became Deputy Assistant Administrator for Water. I  
5 believe I was -- held that title for approximately a week.

6 Q And prior to that?

7 A I was the Acting Assistant Administrator for  
8 Water.

9 Q Okay. How long did you have that role?

10 A I don't know exactly. I think it was sometime in  
11 2011.

12 Q Okay. So you were overseeing the Office of Water;  
13 is that correct? In that capacity?

14 A That's correct.

15 Q Okay. Roughly how many people work in the Office  
16 of Water?

17 A I believe the number is diminishing. It was about  
18 700 at one time when I worked there; I believe it's closer  
19 to 500 now.

20 Q How many people do you directly oversee?

21 A I was the supervisor for the four office directors  
22 at that time. Mike Shapiro, who is the Deputy Assistant  
23 Administrator for Water, and Ellen Gilinsky who is -- I  
24 believe her title is policy advisor. I believe I was also  
25 the supervisor for Greg Peck, the Chief of Staff.

1 Q Okay. Do you have any experience at EPA prior to  
2 this role?

3 A I do.

4 Q What were those -- what did they entail?

5 A I was at EPA approximately from 1996 to 1999. I  
6 was in the Office of Enforcement and Compliance Assurance.

7 Q So what did you -- prior to your time at -- as the  
8 Acting Administrator for Water, what were you -- what was  
9 your prior employment?

10 A I worked at the Natural Resources Defense Council  
11 in the Water Program there.

12 Q Was this a position that you held between your  
13 time -- your separate times at EPA?

14 A That's correct.

15 Q Okay. No other employment in between -- in that  
16 time period?

17 A No, sir.

18 Q Okay. At what point in the timeline of the WOTUS  
19 rule, or WOTUS proceedings, if it wasn't a rule at the time,  
20 did you get involved with it?

21 A I began attending meetings to discuss the  
22 possibility of a rulemaking or a guidance on the scope of  
23 the Clean Water Act pretty much immediately after I began at  
24 the agency.

25 Q Okay. So the timeline of this process was that

1 there was a decision trying to be made over whether it would  
2 be a guidance or a rulemaking? That was the point?

3 A That was a point of discussion for some period of  
4 time after I started the agency. I think I started in the  
5 agency in February of 2010, if I recall correctly.

6 Q Okay. When you came, I guess, back to the agency,  
7 who briefed you on the rule and kind of got you up to speed  
8 on what was going on with it?

9 A So I started at the agency as the deputy assistant  
10 administrator to Pete Silva, who is the Assistant  
11 Administrator. I'm sure I spoke with Pete Silva about the  
12 issue. I also would have spoken with Greg Peck, the Chief  
13 of Staff, and possibly also Denise Keehner, who at that  
14 time, was the Director of the Office of Wetlands, Oceans and  
15 Watersheds.

16 Q Okay. And just so I have this timeline correct,  
17 you started as the -- correct me if I have any of this wrong  
18 -- the Deputy Assistant Administrator for Water?

19 A That's correct.

20 Q Under Mr. Silva?

21 A That's correct.

22 Q And then when did you become the Acting Assistant  
23 Administrator for Water?

24 A Well that's what I can't remember exactly.

25 Q Oh, I see.

1           A     But I took that position when Pete Silva left. He  
2 went back to California where he came from.

3           Q     Okay. Sometime in 2011 you --

4           A     -- I believe it was in 2011. My recollection is  
5 that was about the time.

6           Q     Okay. What is your background, your expertise in  
7 developing rules such as WOTUS?

8           A     So I am an attorney. So I studied Administrative  
9 Law in Law School. I worked for the D.C. Court of Appeals.  
10 I clerked for a judge there, who is now a senior judge; his  
11 name is James Belson, and we had a lot of administrative  
12 matters there as well, so I learned something more about --  
13 that's not the Federal system but it's the D.C.  
14 Administrative Agencies and we had a number of appeals from  
15 them.

16           And I worked at the Justice Department in the  
17 Environment and Natural Resources Division for nine years,  
18 and did all kinds of different things when I was there, but  
19 it included some matters involving Administrative Law and  
20 rulemaking.

21           Q     Okay. So what is your background or expertise in  
22 implementing EPA's regulatory program? Would it be similar  
23 to what you just stated?

24           A     Yes.

25           Q     Okay.

1           A     EPA was a client of mine at various times when I  
2 was at the Justice Department, for example.

3           Q     Mm-hmm. What was your role with respect to the  
4 rule? I guess just to clarify, when I say the "rule," I  
5 mean the WOTUS process. I know at some point it was  
6 considered a guidance, and then sort of became a rule, but  
7 for the sake of simplicity, I might refer to it as rule, but  
8 --

9           A     So I was not at the agency when the rule was  
10 finalized, but during the time period that I was involved  
11 with developing a guidance or developing the proposed rule,  
12 I was the Head of the Office of Water. So it was a rule  
13 being developed by the Office of Water.

14          Q     Okay. Have you played a similar role for any  
15 other EPA rules?

16          A     Yes.

17          Q     Okay. Do you remember any of them off the top of  
18 your head?

19          A     I do, I just realized in my previous answer that I  
20 guess I was the deputy initially, and then I was the Head of  
21 the Office of Water. So I guess both of those, so I'm just  
22 correcting that.

23          Q     Sure.

24          A     Other rules. Oh boy. There were a lot of rules  
25 that were developed during the time period that I was at

1 EPA. We had a regulatory docket that involved water quality  
2 standards that involved affluent guidelines. [Pause] I'm  
3 having trouble thinking of anything that isn't one of those  
4 two right now, but I'm --

5 Mr. Coburn. -- If that's all you can remember, it's no  
6 problem.

7 Ms. Stoner. I think that's --

8 Mr. Hambleton. -- That's fine.

9 Ms. Stoner. Those are the ones that come to mind right  
10 now, there may have been more.

11 BY MR. HAMBLETON:

12 Q Have you worked with the Army Corps of Engineers  
13 on any other rulemakings besides WOTUS?

14 A Yes. There is a -- there was a rulemaking  
15 involving something that was at that time called the Buffer  
16 Zone rule. I was involved in that rulemaking with the Army  
17 Corps.

18 Q Is that the Stream Buffer Zone rule?

19 A Probably.

20 Q Is that a Department of Interior rule that you  
21 were perhaps, providing interagency comment on? Or I might  
22 be thinking of something else.

23 A That might be right.

24 Q Okay. All right. So in this process -- your work  
25 on WOTUS -- how did directions typically flow to you?

1           A     I -- I'm not sure I understand.  Directions from  
2 whom?

3           Q     Well I assume you were taking direction from  
4 others at the agency, perhaps the Administrator, perhaps?  
5 How did this -- how did you fit into the hierarchy, here?

6           A     Well my supervisor was the administrator,  
7 initially Lisa Jackson, and then Gina McCarthy.  I also  
8 worked with the General Counsel, Scott Fulton and later, Avi  
9 Garbow.  I also worked a lot with the Deputy Administrator,  
10 Bob Perciasepe.

11           I would say that Bob Perciasepe was directly involved  
12 in the Clean Water rule, more so than either administrator.

13           Q     How do you manage your responsibilities on WOTUS  
14 to your staff?  How did you delegate, et cetera?

15           A     There were a number of other people who were  
16 involved in the Clean Water rule -- rulemaking.

17           At some point, Ken Kopocis joined the staff at the  
18 Office of Water, and he was very involved.  Greg Peck, the  
19 Chief of Staff, was very involved, and the Office of  
20 Wetlands Oceans and Watersheds was involved; they have a  
21 division there that has worked on wetlands and streams  
22 issues for the whole time I've been involved with the  
23 agency.

24           Oh golly, I'm having trouble thinking of the name of  
25 the person who ran it.  Dave Evans.  Dave Evans was directly

1 involved.

2 Q So throughout this process, who did you report to?  
3 Mr. Perciasepe? The administrators? Each of them. Is that  
4 accurate?

5 A That's accurate.

6 Q Anyone else?

7 A No.

8 Q Did you ever have conversations with divisions of  
9 the Executive Office of the President regarding the  
10 rulemaking?

11 A Yes.

12 Q Okay. Like who?

13 A So CEQ was involved, and OMB was involved.

14 Q Okay. And that's it, to your recollection?

15 A I'm not sure.

16 Q Okay.

17 A Those were the two principal entities in the White  
18 House who were involved.

19 Q Okay. So did anyone from the White House join  
20 calls or meetings regarding the WOTUS rulemaking?

21 A Yes.

22 Q Would these generally be OMB or CEQ staff?

23 A That's correct.

24 Q In these meetings, what type of input would you  
25 provide?

1           A     I would most often be listening to a briefing by  
2 someone who is directly working on the rule and discussing  
3 the issues with others involved in the meeting.

4           Q     One of your employees from EPA or who? Someone  
5 else?

6           A     It depends, really, where the briefing was. Are  
7 you asking about a White House briefing?

8           Q     Well if you're in -- I asked you if you had  
9 meetings and calls with the folks in -- at the White House  
10 and then you mentioned that your input would be to kind of  
11 listen or take in various briefings, so I'm just curious who  
12 was providing those briefings with that information.

13          A     Yeah. So if the briefing was for the Deputy  
14 Administrator or the Administrator, then usually the --  
15 either the Division Director or the Head of the Office of  
16 Wetlands Oceans and Watersheds would have provided that  
17 briefing.

18           If a meeting was at CEQ or perhaps at OMB, those  
19 individuals may have provided that briefing, or the Army  
20 Corps of Engineers may have provided that briefing.

21          Q     Right. But generally the providers of these  
22 briefings were EPA employees as opposed to OIRA, for  
23 instance, or CEQ. Is that accurate?

24          A     EPA or the Army Corps, yes, sir.

25          Q     Or Army Corps, of course.

1           A     Yes, sir. Or both.

2           Q     Were any technical or policy decisions made in  
3 these calls or meetings?

4           A     Again, we're talking about White House meetings;  
5 is that correct?

6           Q     Yes. We're talking about these meetings that you  
7 were involved in that -- or that you were at that involved  
8 White House officials.

9           A     They would have been meetings primarily about the  
10 regulatory process. And potentially, also interactions with  
11 the public or members of the public who are interested in  
12 the rulemaking.

13           I'm not -- I wouldn't think that they would be  
14 technical, like not engineering kind of technical.

15           Q     All right. What type of direction, if any, would  
16 you -- or EPA receive in these meetings?

17           A     [No verbal response.]

18           Mr. Coburn. To the extent you don't understand a  
19 question, don't hesitate to ask for clarification.

20           Ms. Stoner. [Pause] it's -- I think it's hard to  
21 answer the question because it assumes that there was  
22 direction that was given in the meeting. I'm not sure that  
23 that was actually the case.

24                   BY MR. HAMBLETON:

25           Q     Okay. So if there's no direction, then -- is that

1 the case? Direction was not given during these meetings?

2 A I'm having trouble thinking of a meeting in which  
3 I was directed to do something.

4 Q Okay. How often would you meet with or discuss  
5 WOTUS with the Administrator? I guess at one point it was  
6 Lisa Jackson, and then another point, Ms. McCarthy.

7 A I would say maybe once every month to six weeks.  
8 I had regular meetings with Lisa Jackson, just regular  
9 meetings about whatever was going on in the Office of Water.  
10 I actually never had regular meetings with Gina McCarthy.

11 Mr. McGrath. Do you know why that was? Was it a  
12 different management style?

13 Ms. Stoner. I assume it was the preference of the  
14 Administrator as to how to manage the employees supervised.

15 Mr. Hambleton. How would you characterize the level of  
16 involvement of Administrator McCarthy in this process?

17 Ms. Stoner. I know that she had a number of meetings  
18 on the rulemaking. Most of them were with Ken Kopocis, not  
19 with me.

20 Mr. McGrath. Is that unusual? You're talking about --  
21 2010 was in the position of the Acting Administrator for  
22 Water after you? Or are you talking about while you were  
23 still in that position?

24 Ms. Stoner. I have no idea what he did after I left  
25 the agency. So this is when he was the Deputy Assistant

1 Administrator for Water in my office.

2 BY MR. HAMBLETON:

3 Q Was Administrator McCarthy's level of involvement  
4 on WOTUS typical for her on rulemakings?

5 A I would think, yes.

6 Q How about former Administrator, Lisa Jackson?  
7 What was her level of involvement in the process?

8 A Typical for a significant rulemaking.

9 Q Was it different than Administrator McCarthy?

10 A I'm not sure.

11 Q So then let me ask you this question. Do they  
12 vary in their approach or involvement with WOTUS? Or are  
13 you not sure?

14 A They are very different kinds of people so they --  
15 it's very hard to compare them.

16 Mr. Hambleton. Okay.

17 BY MR. MCGRATH:

18 Q I just wanted to jump back quickly to two things.  
19 Was it unusual for the Administrator to meet with your  
20 Deputy without you being there? Does it happen in other  
21 situations? It just sounds unusual to me, so I'm just  
22 wondering.

23 A That was not unusual. He had a lot of experience  
24 with these issues.

25 Q Mm-hmm. And then earlier you talked about Mr.

1 Perciasepe's involvement in this. Was there a point person  
2 who was handling this rule? Like a person who is  
3 essentially, at the end of the day, their responsibility was  
4 to get this moving forward?

5 A That would be me.

6 Q That was you. Okay.

7 A When I was there.

8 Q Mm-hmm. And so you thought that Mr. Perciasepe  
9 was more involved in the administrator when he was there?

10 A Yes.

11 Q Yeah.

12 A As he was in most things involving the Office of  
13 Water.

14 BY MR. HAMBLETON:

15 Q Was that different than how you would handle the  
16 other offices? Like the Office of Air, for instance, or was  
17 he always this involved?

18 A Bob Perciasepe was at one time, the Assistant  
19 Administrator for Water. So he knew a lot about the issues  
20 in the Office of Water, and so was very involved and very  
21 helpful.

22 He was also at one time the Assistant Administrator for  
23 Air. So he probably was similarly involved there. As far  
24 as the other offices, my guess is he may have been involved  
25 less.

1 Q Okay. Let's talk a little bit about the  
2 development of the guidance; that part of this process. And  
3 you had mentioned that you first became involved with the  
4 WOTUS process when you returned to the agency. Is that  
5 correct?

6 A Right. When I started at the agency, yes.

7 Q Okay.

8 A In 2010.

9 Q So what role did you play in the development of  
10 the Clean Water Act guidance?

11 A Pretty much the same as the rulemaking. I was the  
12 lead for the Office of Water, even though Pete Silva was, at  
13 that time, the Assistant Administrator for Water.

14 Q Why was that?

15 A Probably because I'm a lawyer and he was an  
16 engineer -- or is an engineer. He was ultimately  
17 responsible, but I was the lead, in terms of attending most  
18 of the meetings, doing most of the work.

19 Q Right. The committee received some -- information  
20 briefing from Army, and it states that it began preparing a  
21 joint guidance with EPA on clean water jurisdiction in 2010.

22 And we have heard from -- in other interviews with Army  
23 and Army Corps folks that the Army took its first meetings  
24 with the EPA on guidance in 2009, and by that point, the  
25 guidance had already been drafted by the EPA.



1 Q What role did he play in the WOTUS process when  
2 you were there?

3 A So he played a similar role to the role he played  
4 in lots of issues which was to be sort of an intermediary  
5 between the Administrator's Office and the Program Office.

6 Q Now if you look at the bottom of page 1 in Mr.  
7 Sussman's email, in the second sentence, "The delay in  
8 completing interagency review is preventing closure on the  
9 strategy for releasing the guidance."

10 Do you know what he's referring to?

11 A Well I know what the interagency review process  
12 is.

13 Q Well what does he mean, if you know, that the  
14 Interagency review process, then, if that's what he's  
15 referring to, "is preventing closure on the strategy for  
16 releasing the guidance"?

17 A So in rulemaking, there is an interagency review  
18 process that's run by OIRA at OMB, and it enables agencies  
19 that are not drafting a rule to comment on that rule.

20 I believe that that process was applied to the draft  
21 guidance here, even though, arguably, it didn't need to be  
22 because it wasn't a rule.

23 Q How was it preventing closure?

24 A Again, in a rulemaking context, OMB clears a rule  
25 before it is finalized at the end of the interagency review

1 process.

2 One of the roles that OIRA plays is to resolve any  
3 differences among the agencies about the rule, and once  
4 those issues have been resolved to the satisfaction of OMB  
5 and the agencies, then the rule is cleared and can be  
6 finalized.

7 Q Can you describe the delay that he is referring  
8 to, here?

9 A I don't recall it.

10 Q The email both indicates that OIRA is involved  
11 during the development of the guidance. Is that correct?

12 A I'm sorry, Ryan, where are you looking?

13 Q I'm sorry. Just the traffic back and forth here  
14 above, shows OIRA employees. And I just asked you if OIRA  
15 was involved during the development of the guidance.

16 A This appears to be an attempt to ensure that a  
17 number of people could get together and discuss the  
18 remaining issues on the guidance, including the Army Corps  
19 and staff at OIRA.

20 Michael Boots is also on this email, he was at CEQ at  
21 the time, and then of course, there are several people from  
22 the Army Corps as well, including Rock Salt, who was my  
23 counterpart through most of the rulemaking process at the  
24 Army Corps.

25 Actually, he's at the -- the Corps is wrong, isn't it?

1 He's at the Civil -- let's see, U.S. Department of Army  
2 Civil Works.

3 Mr. Coburn. Nicely done.

4 Ms. Stoner. I was having a little trouble with that.

5 Mr. McGrath. It can be rather confusing over there.

6 Ms. Stoner. It is. It is, yes.

7 BY MR. HAMBLETON:

8 Q Indeed. So in this chain, we see the name of  
9 Dominic Mancini and Jim Laity who are OIRA employees.

10 A That's correct.

11 Q Were there any other OIRA employees that you are  
12 aware of that you worked with on this guidance?

13 [Pause.]

14 A I can't think of any right now.

15 Mr. Hambleton. Okay.

16 Mr. McGrath. And what was Michael Boots' involvement  
17 in the guidance process?

18 Ms. Stoner. So Michael Boots and Jay Jensen were both  
19 CCQ employees at the time. And they would have been  
20 involved in calling meetings to discuss issues involving  
21 OMB, the Army and EPA and resolving those issues.

22 Mr. McGrath. Essentially facilitating everyone else.

23 Ms. Stoner. That's correct.

24 BY MR. HAMBLETON:

25 Q Did you or to your awareness, EPA staff feel that

1 there were problems in working with OIRA?

2 A My staff was very used to working with OIRA and  
3 worked very hard to maintain good relationships with OIRA  
4 because they were essential to getting the rulemaking  
5 process complete.

6 Q Were they successful in that endeavor?

7 A I think so, yes.

8 Q Did you or anyone at EPA ever discuss uninviting  
9 OIRA or anyone from OIRA from meetings regarding the  
10 guidance or rule?

11 A I don't recall.

12 Mr. Coburn. You mean anyone that she is aware of?

13 BY MR. HAMBLETON:

14 Q That she is aware of.

15 A Yeah, I don't recall that.

16 Q Okay, so you don't recall any discussion about  
17 trying to move anyone off the project or anything like that  
18 from OIRA?

19 A I don't recall that.

20 Q The EPA and the court decided to pursue a  
21 rulemaking instead of moving forward with the guidance. How  
22 is that decision made?

23 [Pause.]

24 A I'm not sure I know.

25 Q Okay. Let me ask you a few questions about

1 outreach during development of WOTUS. What was your role in  
2 conducting outreach for the rule?

3 A I personally did a lot of outreach on the topics  
4 covered by both rulemaking and the guidance.

5 Q Okay. How do you decide who to meet with?

6 A Well we had regularly scheduled meetings, with a  
7 variety of different stakeholders. So those were calendared  
8 before I got to the agency. They're probably still  
9 calendared if you looked at the agency's calendar.

10 Those were meetings at which we discussed this. And  
11 then we did additional meetings with lots of different  
12 people who requested the opportunity to talk with us.

13 Q So who do you invite to these meetings? These  
14 outreach meetings?

15 A So the regularly scheduled meetings which I  
16 believe were quarterly meetings with a variety of different  
17 perspectives. There was a regular list of people who were  
18 invited every quarter, and then other people could ask to  
19 join.

20 So there was an industry stakeholder group, there was  
21 an agricultural stakeholders group, there was a conservation  
22 stakeholder group, there was -- there were meetings with  
23 state groups, there were meetings with utilities, there were  
24 all these -- anyone who was interested in the business of  
25 the agency had an opportunity to come periodically and to

1 hear from all the different offices and to hear about  
2 whatever issues they wanted to ask about.

3 Mr. McGrath. Did you have any specific roles because  
4 your previous job was with NRDC? Meeting with them or  
5 anything like that?

6 Ms. Stoner. I did. I had restrictions for, I believe,  
7 two years in the agency where I did not have any private  
8 conversations or meetings with NRDC.

9 BY MR. HAMBLETON:

10 Q During the development of the rule, and in regards  
11 to the outreach, did you receive any instruction from OIRA  
12 or OMB, or CEQ about who to meet with?

13 A I may have.

14 Q Do you recall any more details than that?

15 A I think there was a desire to ensure that people  
16 who were interested in the rulemaking had an opportunity to  
17 talk with EPA staff, Army Corps staff, raise any concerns  
18 they had and that the agencies had an opportunity to discuss  
19 those concerns and address them.

20 So there was discussion of our desire to do that.

21 Q Do you or anyone from EPA invite anyone from the  
22 White House to participate in your outreach meetings?

23 A So there is also a process whereby members of the  
24 public can request meetings with the White House. That  
25 would be the venue for such meetings.

1           We did not normally have people outside the agency, at  
2 the meetings that I described earlier, but we did have some  
3 meetings that involved both the Army Corps and EPA since  
4 both agencies were involved in the ruling.

5           Q     Right. So at those outreach meetings, would EPA  
6 policy or technical staff be present?

7           A     Absolutely.

8           Q     Okay.

9           A     They would be the ones who would be the people who  
10 are principally talking at those meetings. I was usually  
11 chairing the meeting.

12          Q     Mm-hmm. Did any of these meetings take place  
13 before the proposed rule was published?

14          A     Yes, these meetings -- a lot of these meetings are  
15 regularly scheduled, so they -- a lot of them would have  
16 been before the proposed rule was published.

17          Q     And would the Army Corps be present at these  
18 meetings?

19          A     The regularly scheduled meetings of the Office of  
20 Water would not involve the Army Corps. There were some  
21 meetings where the Corps was involved, specifically. In  
22 part to be able to answer questions that the public had of  
23 related issues, like the permitting program and so forth,  
24 which the Army Corps runs.

25          Mr. McGrath. I guess I'm just a little bit confused.

1 These regularly scheduled outreach meetings with outside  
2 groups, were there certain groups with like, some group has  
3 a standing meeting with the Office of Water? Is that like  
4 Farm Bureau or something like that or is it --

5 Ms. Stoner. The Farm Bureau was involved in the  
6 regular agriculture meetings, but it wasn't a private  
7 meeting. It would have been a meeting that would have maybe  
8 twice as many people as the room here, maybe three times as  
9 many sometimes.

10 BY MR. HAMBLETON:

11 Q Okay, so then multiple stakeholders in the room.

12 A Correct.

13 Q Okay.

14 A And the way we had them set up was that you had an  
15 agricultural stakeholder, brown bag or whatever, and then  
16 you had one for industry representatives and others, so the  
17 -- there would have been -- the Farm Bureau would have been  
18 there with the cattlemen, and the pork producers, and  
19 chicken council and Farmer's Union. Those -- the  
20 agricultural stakeholder group.

21 Q No, I think that is good to make clear that it was  
22 a larger group.

23 A It was a larger meeting, in general.

24 Q Mm-hmm.

25 A And again, people -- those are the regularly

1 schedule ones, but if someone said, "So I represent the  
2 American Petroleum Institute and I would like to come in a  
3 talk about a particular issue that is of interest to the  
4 American Petroleum Institute."

5 Then we would figure out who was the right person to  
6 meet with that person and set up that meeting. So there was  
7 a regular process for responding to meeting requests.

8 Q Okay, so during that process, whether they were --  
9 I guess ad hoc meetings, maybe, versus the regularly  
10 scheduled ones. Would EPA collect comments and  
11 recommendations from these meetings?

12 A The agency would certainly get feedback and  
13 comments that were offered in those meetings. Sometimes  
14 there was a presentation before that, and sometimes there  
15 may not have been; it may have been that they were -- that  
16 the stakeholders were reading something, if there was some  
17 public document and providing feedback in that way.

18 Q Like maybe a handout or something like that,  
19 perhaps?

20 A Well there were various things put out by the  
21 agency over the time period I was there that related to the  
22 scope of the Clean Water Act and so people would have been  
23 able to provide feedback to the agency on those things.

24 Q All right. So again, knowing that there was some  
25 of these, sort of standard meetings, I guess, during your

1 time at EPA did you participate in outreach meetings for  
2 rulemakings besides WOTUS?

3 A Yes.

4 [Pause.]

5 Q All right. So related to that outreach, and to  
6 the extent that you were still at the agency, I want to talk  
7 a little bit about the public comment period.

8 A Okay.

9 Q Were you engaged in how to respond to substantive  
10 public comments before you left the agency?

11 A So is your question referred to the proposed  
12 regulation?

13 Q Yeah, after the proposed regulation was put in the  
14 Federal register, the official comment period began, which I  
15 believe was in the spring of 2014, and you said you departed  
16 in the summer of 2014.

17 So during that time, were you engaged in the -- in this  
18 process? In the response of substantive public comments.

19 A I can't recall when the comment period closed.

20 [Pause.]

21 Q Was it still open when you left?

22 A I can't recall.

23 Q Okay.

24 A At the end of a comment period, the comments would  
25 have been summarized to be part of the rulemaking record,

1 and there would have been discussions of the issues.

2 And I can't recall whether that occurred, so it might  
3 have been open still, or it may be that I wasn't involved.

4 Q Okay. So were you involved in how to revise a  
5 proposed rule based on public comments then?

6 A I feel as if we weren't that far along yet.

7 [Pause.]

8 Q So did you review any of the comments during this  
9 time as they were coming in?

10 A I'm assuming you're asking about comments that  
11 were submitted.

12 Q That is correct.

13 A Not -- 'cause I did have interaction with people  
14 in the outreach and received feedback in the outreach, so I  
15 certainly heard that feedback and thought about it.

16 I don't recall reading comments, so it may be that they  
17 were still coming in at that time, or again, maybe I wasn't  
18 the one reading them. I am just not sure.

19 Q Okay. Do you know when EPA began reviewing  
20 substantive comments?

21 A Well the staff would start to review them as they  
22 came in, but then they would be compiled and analyzed as a  
23 group at the end.

24 Q Okay. So when you say, "staff," who would you  
25 mean?

1           A     Dave Evans and his team in the Wetlands Division,  
2 the Office of General Counsel and their team working on the  
3 rulemaking, Meg Smith and her team at the Army Corps. She  
4 also had counsel working with her. Greg Peck from the  
5 Assistant Administrator's Office may have been involved as  
6 well.

7           Q     Do you happen to know whether EPA finished its  
8 review of substantive comments before the final rule was  
9 sent to OMB?

10          A     The final rule? I have no idea.

11          [Pause.]

12          Mr. Coburn. Would you guys typically take a break  
13 between when we -- when you split at the hour?

14          [No verbal response.]

15          Mr. Coburn. Perfect.

16          Mr. Hambleton. We'll go off the record.

17          [A brief recess was taken at 11:03 a.m.]

18          Mr. Longani. All right. We're back on, it is 11:12  
19 a.m. and Ms. Stoner, we'll be going for the next,  
20 approximately hour, before my colleagues will jump back into  
21 the seat and continue.

22          Ms. Stoner. Okay.

23          Mr. Longani. Again, just to remind you, if I ask you a  
24 question that you don't understand that's ambiguous, vague,  
25 please don't guess, just ask me to rephrase if you don't

1 understand.

2 Ms. Stoner. Okay.

3 Mr. Longani. If I don't speak loud enough, unlikely,  
4 but if you can't hear me for whatever reason, let me know.

5 Ms. Stoner. Okay.

6 Mr. Longani. I want to make sure that my questions are  
7 clear, and you know what you're answering. And finally,  
8 please don't speculate. If you don't know the answer to a  
9 question, certainly say, "I don't know." We're going to ask  
10 you to just testify based on what you do know.

11 Ms. Stoner. Okay.

12 Mr. Longani. Okay? Thanks very much.

13 EXAMINATION [Resumed]

14 BY MR. LONGANI:

15 Q Ms. Stoner, I'm going to go over a couple of  
16 things that my colleagues briefly touched on, try and get a  
17 few more details; okay? So I'm going to start with your  
18 background. What is your educational background?

19 A I have a law degree from Yale Law School, and I  
20 have a BA from University of Virginia.

21 Q And my understanding is you have had two stints at  
22 the EPA. Is that correct?

23 A That's correct.

24 Q You have from 1996 to 1999; is that correct?

25 A I believe that's correct.

1 Q And then you came back in August of 2010?

2 A No, I was -- it definitely wasn't August. I think  
3 it was February, it was -- there was a big snowstorm.

4 Q Okay. So the winter of 2010.

5 A Winter of 2010. That's right.

6 Q Okay. And at some point during your second stint,  
7 you become head of the Office of Water; correct?

8 A That's correct.

9 Q And you hold that position until a week before you  
10 leave the EPA for the final time. Is that correct?

11 A I was the highest ranking official, still, in the  
12 Office of Water, even after I became the deputy. Under the  
13 Vacancies Act, the agency could no longer have an Acting  
14 Assistant Administrator for Water at that point, due to the  
15 time period that Ken Kopocis, the nominee, had been pending.

16 Q Okay. Were you involved in rulemakings during  
17 your first stint at the EPA?

18 A A few.

19 Q And prior to your involvement with the Clean Water  
20 rule, approximately how many rulemakings have you been  
21 involved with in your career? Not an exact number, but are  
22 we talking hundreds of rules? Thousands?

23 A Probably dozens.

24 Q Dozens, okay. And have some of those rules been  
25 joint rules?

1           A     There are not very many joint rules.  So few.

2           Q     But the Clean Water rule was not your first  
3 experience working with a joint rulemaking.  Is that  
4 correct?

5           A     It was not my first experience working with the  
6 Army Corps, I'm not sure whether I had previously worked on  
7 a joint rulemaking.

8           Q     Okay.

9           A     Just to clarify, my earlier statement about  
10 "dozens."  So I'm talking about rules I had experience with,  
11 in any of the prior contacts.  Yes.  Not always as the one  
12 who was promulgating the rule.

13          Q     Absolutely.  Okay.  Ms. Stoner, I want to talk to  
14 you a little bit about the purpose of the Clean Water rule.  
15 So let's start with that.  What is the purpose, or what are  
16 the purposes/objectives of the Clean Water rule to the best  
17 of your recollection?

18          A     The purpose of promulgating the Clean Water rule  
19 was to clarify the scope of the Clean Water Act.  There was  
20 a lot of confusion about it, and determinations about the  
21 scope of the protections of the law were being made  
22 differently, in different parts of the country, and there --  
23 the idea was to ensure that whatever waters were protected  
24 were protected consistently across the country, and that  
25 people would know whether or not a water was covered or not.

1 Q Would you agree that if the rule was implemented,  
2 protected waters would be more precisely defined?

3 A That was the goal.

4 Q Would you agree if the rule was implemented, it  
5 would be easier for stakeholders, including small businesses  
6 in the industry, to predict which waters are protected?

7 A Yes.

8 Q Would you agree that waters protected under the  
9 rule -- under the Clean Water rule would be consistent with  
10 the latest science?

11 A That was the goal.

12 Q The rule seeks to preserve protection of waters  
13 beyond navigable waters for purposes of the Clean Water Act;  
14 correct?

15 A That's correct. Navigable, in fact, waters. Yes,  
16 sir.

17 Q So for example, ditches, wetlands, prairie  
18 potholes and other water bodies that relate to navigable  
19 water, therefore, to our sources of drinking water, would  
20 come within the Clean Water rule and subsequently, the  
21 protection under the Clean Water Act. Is that correct?

22 A The rule was designed to protect stream systems  
23 and inner-connected waters. Some of the terms that you used  
24 may or may not be connected in some cases.

25 Q So it was designed to protect -- the Clean Water

1 rule is designed to protect water bodies that are inner  
2 related to, for example, navigable rivers.

3 A Correct.

4 Q What benefits would the Clean Water rule provide  
5 the American people, if any?

6 A So protection under the Clean Water Act helps  
7 ensure that waters are not destroyed or polluted, such that  
8 they can't be used for all the things that we use water for.  
9 So that involves recreational use, drinking water uses,  
10 industrial uses. There's tremendous economic value to  
11 having useable waterways.

12 So -- and that's why the Clean Water Act was passed by  
13 Congress, and so the purpose was to ensure that those waters  
14 would be protected. The theory being that you can't protect  
15 the big waterways if you don't protect the smaller waterways  
16 that feed into them.

17 Q So that was the purpose of the Clean Water rule.  
18 Is that correct? Or one of the purposes of the Clean Water  
19 Act.

20 A So I wasn't there at the promulgation of the final  
21 rule. The goals were to ensure that we were fulfilling the  
22 purposes of the Clean Water Act, and providing the  
23 protections that the Americans expect and deserve, and that  
24 we were doing that in a way that provided the greatest  
25 clarity possible.

1 Q Now Ms. Stoner, you have referred, repeatedly, in  
2 terms of what the objectives of the Clean Water rule were.  
3 You said, for example, one of those objectives was to  
4 provide clarity to stakeholders. Is that correct?

5 A Yes.

6 Q Okay. Did the Supreme Court decisions through the  
7 2000s, including Rapanos and SWANCC create confusion in the  
8 regulated community as to which waters were covered and  
9 protected by the Clean Water Act?

10 A Yes.

11 Q Did that confusion add red tape, time and expense  
12 to the permitting practice, generally?

13 A Yes. Well to the delineation process and the  
14 permitting process.

15 Q When you say the "delineation process," what does  
16 that mean?

17 A So the Corps has principal responsibility for  
18 determining whether a waterway is protected under the Clean  
19 Water Act and whether a discharge requires a permit. Then  
20 the Corps also is responsible for issuing that permit if the  
21 permit application requirements are met.

22 Q And after Rapanos and SWANCC decisions, the  
23 regulated community was confused as to whether certain  
24 waters were covered by the Clean Water Act. Is that  
25 correct?

1           A     Yes.

2           Q     As a result of these decisions, what stakeholders,  
3 if any, asked for a rule?

4           A     A broad range of stakeholders asked for a ruling,  
5 including the development industry.

6           Q     Agriculture groups?

7           A     I'm not sure.

8           Q     Okay. Private industry?

9           A     Yes.

10          Q     Politicians from both the Republican side and the  
11 Democrat side?

12          A     I believe that's correct.

13          [Pause.]

14          Q     But the Clean Water rule helped to ensure that the  
15 American public's drinking water is safe?

16          A     That was one of the goals.

17          Q     To your knowledge, does the Clean Water rule keep  
18 intact all Clean Water Act exemptions and exclusions for  
19 agriculture?

20          A     I don't know, exactly, what's in the final Clean  
21 Water rule.

22          Q     Okay. And again, you may or may not know this.  
23 Do you know if the Clean Water rule continues to exempt  
24 agricultural activities for normal farming activities?

25          A     The law exempts normal farming activities. So

1 rule can't change what the law would -- wants.

2 Q So the Clean Water rule did not rescind that  
3 exemption; correct?

4 A No, and during the time period I was there, we  
5 made an effort to ensure that all of the exemptions provided  
6 for agriculture were maintained.

7 Q And why was that an objective?

8 A In part because it was the intent of Congress, as  
9 reflected in the statutory language, and it was a balance  
10 that was struck at that time that we attempted to maintain.

11 [Pause.]

12 Q During your time at the EPA, Ms. Stoner, did the  
13 EPA and Army work with the USDA to develop and publish an  
14 interpretive rule that sets forth a list of agricultural  
15 conservation practices that would not be subject to the  
16 Clean Water Act? To your knowledge.

17 A Agricultural practices that would not require a  
18 permit under the Clean Water Act, yes.

19 Q That would not require a permit under the Clean  
20 Water Act.

21 A Correct.

22 Mr. Longani. Thank you for that clarification. I am  
23 going to mark this as -- I believe we're up to Exhibit 2.

24 [Stoner Exhibit No. 2 was marked for  
25 identification.]

1 Ms. Stoner. I'm sorry, can I --

2 Mr. Longani. Oh.

3 Ms. Stoner. Thank you.

4 BY MR. LONGANI:

5 Q Ms. Stoner, I'm handing you a press release. It  
6 is titled, "Clean Water rule Protects Streams and Wetlands  
7 Critical to Public Health Communities and Economy." I am  
8 going to ask you to just peruse the first page for me while  
9 I hand this out to my colleagues.

10 And for the record, Exhibit 2 is dated May 27, 2015 and  
11 I'm going to start reading the third paragraph. In this  
12 third paragraph, Administrator McCarthy is quoted as saying,  
13 "For the water in the rivers and lakes in our communities to  
14 flow to our drinking water to be clean, the streams and  
15 wetlands that feed them need to be clean, too."

16 Ms. Stoner, would you agree with the Administrator's  
17 statement? And I'm sorry if you were reading and I --

18 A No, that's fine. Yes.

19 Q The statement that I'm referring to is the first  
20 sentence of the third paragraph.

21 A Right.

22 Q Which again, states, "For the water in the rivers  
23 and lakes in our communities that flow to our drinking water  
24 to be clean, the streams and wetlands that feed them need to  
25 be clean, too."

1           Would you agree with that statement, Ms. Stoner?

2           A     I would.  That's my understanding of the science.

3           Q     And in fact, Administrator McCarthy, in that same  
4 paragraph continues, and says, "Protecting our water sources  
5 is a critical component of adapting to climate change,  
6 impacts like drought, sea level rise, stronger storms and  
7 warmer temperatures which is why EPA and the Army have  
8 finalized the Clean Water rule to protect these important  
9 waters so we can strengthen our economy and provide  
10 certainty to American businesses."

11          Do you agree with Administrator McCarthy's statement?

12          A     The climate has more impact on waterways than  
13 almost anything else, and I would agree with what she has to  
14 say.

15          Q     The fourth paragraph of that same press release,  
16 the Assistant Secretary for the Army of Civil Works, Jo-  
17 Ellen Darcy, states -- and she's referring to the Clean  
18 Water rule -- she says, "This is a generational ruling  
19 completes another chapter in history of the Clean Water Act.  
20 This rule responds to the public's demand for greater  
21 clarity, consistency and predictability when making  
22 jurisdictional determinations.  The result will be better  
23 public service nationwide."

24          Would you agree with Assistant Secretary Darcy's  
25 statement?

1           A     Again, those are the goals of the rule. I just  
2 wasn't there at the time the rule was finalized, but that's  
3 what we were intending to do, yes, the time I was there.

4           Q     Ms. Stoner, I know you were not involved,  
5 actually, promulgating the final rule, so I am going to ask  
6 you this question, and if you don't know the answer, please  
7 let me know.

8           I certainly don't want you to speculate, but would you  
9 agree that under the Clean Water rule, if no permit was  
10 needed prior to the Clean Water rule, no permit would be  
11 needed once the Clean Water rule was implemented.

12          Is that accurate? If you know.

13          A     So this was not a permitting rule, so this did not  
14 require additional -- this didn't make changes to the  
15 permitting program. I'm not sure whether that answers your  
16 question.

17          Q     Sure. [Pause.] All right, Ms. Stoner, I'm now  
18 going to ask you a series of questions that relate to your  
19 role in the promulgation of the -- both the guidance and the  
20 draft proposed rule, as you were not involved in the draft  
21 final rule process.

22          Generally speaking, as you were the head of the Office  
23 of Water, what is the purpose of the Office of Water? At  
24 the risk of asking an obvious question.

25          A     To implement the programs that are intended to

1 protect surface waters and tap water.

2 So the Clean Water Act and the Safe Drinking Water Act  
3 are the two main statutes that are implemented by the Office  
4 of Water. There is some other, more minor ones, but those  
5 are the two main ones.

6 Q What role, if any, did you have in the  
7 promulgating agencies' decision to withdraw the guidance,  
8 instead, focus on promulgating the rule?

9 A I was involved in meetings where those issues were  
10 being discussed.

11 Q And would you agree that there was significant  
12 support from stakeholders to withdraw the guidance and  
13 instead, focus on promulgating the rule?

14 A Yes. There was a recognition that the clarity  
15 that people were seeking would be better obtained from a  
16 regulation than from a guidance.

17 [Pause.]

18 Q What role, if any, did you have in the actual  
19 development of a Clean Water rule during the draft-proposed  
20 rule stage?

21 A I was involved in discussions of issues and  
22 resolution of those issues between EPA and the Corps. I was  
23 involved in meetings with counsel about legal issues. So I  
24 don't know what else to say.

25 Q Sure. What was Greg Peck's role, from your

1 perspective, in the Clean Water rule, specifically, during  
2 the draft rule stage -- draft-proposed rule stage?

3 A He facilitated a lot of issue identification and  
4 resolution, particularly between the Army Corps and EPA's  
5 Office of Water.

6 Q Did Mr. Peck have a significant history with the  
7 Clean Water rule?

8 A He did. He at one time ran the division -- the  
9 Wetlands Division that Dave Evans was running at the time  
10 that I was at the agency.

11 Q What role did you have, if any, in the development  
12 of the Clean Water rule after the draft-proposed rule was  
13 submitted to OIRA?

14 A I don't think that role -- that my role changed.  
15 It was the same.

16 Q Ms. Stoner, are you familiar with the process of  
17 public comment in a rulemaking procedure?

18 A I am.

19 Q What is the purpose of an agency giving the public  
20 an opportunity to comment on a rulemaking?

21 A To make it better.

22 Q Do you know how long the public comment period was  
23 for the Clean Water rule?

24 A I recall extending the time period, but I -- I'm  
25 not completely certain whether it would -- ended up being 90

1 days or longer than that. It was an extensive comment  
2 period.

3 Q In fact, the public comment period was extended  
4 twice. Why was it, Ms. Stoner that the promulgating  
5 agencies and OIRA agreed to extend the public comment  
6 period?

7 A To give the public additional time to comment.

8 Q And did you receive a significant number of  
9 comments from the public?

10 A Oh yes, quite a few.

11 Q Did the promulgating agencies incorporate those  
12 public comments into the rulemaking?

13 A We did the best we could to address the public  
14 comments. Some of them conflicted with one another.

15 Q Were all the comments that came in and reviewed by  
16 the promulgating agencies?

17 A I believe they were.

18 [Pause.]

19 Q Ms. Stoner, did you communicate directly with OIRA  
20 during the development of the Clean Water rule?

21 A Yes.

22 Q Who did you communicate with there? Who are your  
23 points of contact?

24 A Jim Laity was the principal point of contact. Dom  
25 Mancini was also involved.

1 Q Anything unusual about the promulgating agencies  
2 speaking to OIRA about a rule?

3 A No, it's an intended and usual part of the  
4 process.

5 Q Clean Water rule as you know, Ms. Stoner, is a  
6 joint rule between the EPA and the Army. During the  
7 promulgation of the Clean Water rule, did you have a point  
8 of contact at the Army Corps?

9 A My principal counterpoint was Rock Salt.

10 Q Who is in the Office of Civil Works. Is that  
11 correct?

12 A I believe so, yes.

13 Q Okay.

14 A He is Assistant Secretary of the Army Civil Works,  
15 he works for -- or did work for Jo-Ellen Darcy.

16 Q And during the guidance stage, how often did EPA  
17 and the Army meet to discuss WOTUS?

18 A We met frequently while working together to draft  
19 that guidance, probably the staff would have met at least  
20 once every two weeks, and Rock Salt and I would have co-  
21 chaired a meeting at least once a month.

22 Q And did that level or frequency of contact  
23 continue during the proposed draft rule phase?

24 A Yes.

25 Q Did you ever feel that the Army Corps was cut out

1 of discussions at any point during your tenure working on  
2 the Clean Water rule?

3 A No. One of my roles, and Rock Salt's role, was to  
4 identify any issues that needed elevation and we would do  
5 that, and elevate, and then there would be meetings between  
6 Jo-Ellen Darcy and Bob Perciasepe to resolve issues.

7 Q Were you told by anyone, be it at the EPA, EOP,  
8 the White House, to treat the Clean Water rule any  
9 differently than you would any other rule in terms of  
10 process?

11 A No. Except that it was a joint rulemaking, so to  
12 that extent, it's different than most rules.

13 [Pause.]

14 Q Ms. Stoner, Jim Laity told the committee that  
15 there's nothing atypical about the fact that the draft final  
16 Clean Water rule took approximately six weeks to review.  
17 Would you agree with Mr. Laity?

18 A That is not a long time period, no. Very typical  
19 for OMB review.

20 Q Okay. [Pause.] Does EPA set an internal deadline  
21 for when a proposed draft of a rule should be submitted to  
22 OMB as a general matter?

23 A Yes.

24 Q Okay. And did EPA, in the case of the Clean Water  
25 rule, set an internal deadline for when the proposed draft

1 of the Clean Water rule should be submitted to OMB?

2 A So I don't know about the final rulemaking, but  
3 there was a rulemaking schedule as there is for every rule,  
4 that has targets for achieving various milestones. That  
5 would have been the case for this rule as for others.

6 Q So there would not be anything unusual about EPA  
7 setting an internal deadline for completion of the draft-  
8 proposed rule?

9 A No, not unusual.

10 [Pause.]

11 Q Would you consider any part of the rulemaking  
12 process for the Clean Water rule to have been rushed?

13 A No.

14 Q What would happen, Ms. Stoner, to the rulemaking  
15 process at EPA if the EPA did not set internal deadlines for  
16 completion of a proposed draft of a rule?

17 A Well it would be difficult for people to plan, for  
18 one thing. OIRA needs to know, for example, when they're  
19 going to have a proposed rule that they need to clear, and  
20 that's a lot of work on their part, so it's helpful for  
21 planning, whether it's the Office of General Counsel, the  
22 Administrator's Office, whoever, they need to know when  
23 things will happen so they can plan for them.

24 Q To your knowledge, at any point during the  
25 promulgation of the Clean Water rule, did you or anyone else

1 that you worked with, take shortcuts that affected the  
2 thoroughness of your analysis because you were pressured to  
3 meet a deadline?

4 A No.

5 Q As part of the rulemaking process, the  
6 promulgation -- the promulgating agencies must propose  
7 alternatives for proposed rule, correct?

8 A I don't think that's right. There are -- you're  
9 talking about internally, within the agency. Is that right?

10 Q Yeah, I'm talking about for purposes of submission  
11 to OIRA. Does the agency provide alternatives for public  
12 comment?

13 A Certainly not always.

14 Q Okay.

15 A There are alternatives usually presented, within  
16 the agency, in developing the rule. Sometimes there are  
17 alternatives that are developed in regulations that are  
18 proposed, but not always.

19 Q Okay.

20 A Comments sometimes develops alternatives, or the  
21 response to those comments.

22 Q In your experience at EPA, during the Interagency  
23 review process, is it uncommon for agencies to ask for more  
24 time to review a rule?

25 A No, not at all.

1 Q In fact, it's fairly common; isn't it?

2 A Very common.

3 Q In your experience at EPA, are there differences  
4 of opinion amongst the interagency participants common?

5 A Yes. That's actually one of the points of the  
6 interagency review process, is to get views from different  
7 agencies because they have different missions.

8 Q In your experience at EPA, is it common that  
9 during the interagency review process, that agencies express  
10 views that subsequently are not incorporated into the final  
11 rule?

12 A Yes, that's common.

13 Q In fact, isn't it fair to say that in most rules,  
14 there are bound to be differences of opinion, both between  
15 the reviewing agencies themselves, and the reviewing  
16 agencies and the promulgating agencies?

17 A Yes.

18 Q At the end of the proposed draft rule process, did  
19 anything about the rule review process itself concern you?

20 A And this is on the proposal.

21 Q Correct. When you were actually there.

22 A Not that I recall.

23 Q And if you had had any concerns, would you have  
24 brought those concerns to the attention of the  
25 Administrator?

1           A     Probably.

2           [Pause.]

3           Q     Ms. Stoner, do you have any basis to believe that  
4 politics played a role in the EPA's timeline to roll out  
5 this rule?

6           A     I don't know about that. That happened after I  
7 left.

8           Q     Craig Schmauder from the Army told the committee  
9 that, "Our only charge was to do a rule that was science-  
10 based, consistent with the law, and that would bring  
11 predictability and common sense rules to the public.

12           Now if that's considered political, I'll sign up and  
13 say, 'Yeah, that was political.'

14           But in terms of being a directive as to the outcome of  
15 how we would arrive at a rule, all the meetings that I ever  
16 attended, I never once heard any directives coming from  
17 anybody within the Administration as to how the rules should  
18 and shouldn't come out at the end of the final hour."

19           That's on page 126 to 128 for the record, of the  
20 Schmauder transcript. Do you have any reason to disagree  
21 with Mr. Schmauder's statement?

22           A     I don't.

23           Q     In fact, would you agree with Mr. Schmauder's  
24 statement?

25           A     Again, I wasn't there at the promulgation of the

1 final rule, but that -- that's --

2 Q -- During the time, and if I don't say this, it  
3 will be an assumption moving forward, during the time that  
4 you were there, which would include the guidance and the  
5 proposed draft-rule phase, would you agree with Mr.  
6 Schmauder's statement?

7 A I would.

8 Q Okay. The rulemaking process took six years from  
9 beginning to end. Ms. Stoner, would you consider that to be  
10 a rushed process?

11 A I would not.

12 Q During your time at the EPA working on the Clean  
13 Water rule, are you aware of either of the agencies being  
14 directed by anyone at EOP to promulgate this rule with a  
15 disregard for science?

16 A No. In fact, we commissioned a science study to  
17 support the rule, by the Office of Research and Development.

18 Q Are you aware of the promulgating agencies being  
19 directed by anyone at EOP to promulgate this rule in  
20 violation of any legal requirements, regulations or  
21 executive orders?

22 A No.

23 Q In your experience, the EPA on the Clean Water  
24 rule -- working on the Clean Water rule, any evidence to  
25 suggest that science was abandoned and considering and

1 addressing -- was abandoned and considering and addressing  
2 and promulgating this rule?

3 A No. We attempted to use the best science to  
4 support a rulemaking process.

5 [Pause.]

6 Q Ms. Stoner, in your experience, does every  
7 recommendation of a staff member at the promulgating agency  
8 on how to proceed on a rule become adopted and incorporated  
9 into the final rule?

10 A Couldn't possibly happen.

11 Q Is it your understanding that the ultimate policy  
12 decision makers have an obligation to accept and incorporate  
13 every single recommendation that is made by a career staff  
14 person?

15 A No.

16 Q Do you ever see any evidence to suggest that any  
17 portion of this rule was forced upon the Army by the EPA?

18 A No.

19 Q Would you agree that Ms. Darcy was in a position  
20 to bind the Army and not individual Corps employees when it  
21 came to this joint rulemaking with the EPA?

22 A I'm not sure I understand what you mean by that.

23 Q Sure. Would you agree that Ms. Darcy, as it  
24 pertained to this rule, was the final decision maker with  
25 respect to the Army?



1           A     I wasn't there long enough to be involved in  
2     drafting the final rule.

3           Q     Okay. How much progress had been made on the  
4     final rule by the time you left the agency?

5           A     Very little.

6           [Pause.]

7           Q     All right. I would like to ask you about the  
8     interpretive rule. March 2014, EPA and Army promulgated an  
9     interpretive rule pertaining to agricultural exemptions in  
10    Waters of the U.S. under the Clean Water Act, but withdrew  
11    the rule shortly thereafter. Did you have any involvement  
12    in development of this?

13          [Pause.]

14          A     I'm not sure that I know what you're talking  
15    about. Maybe you could show me what you're talking about.

16          Q     I can come back to this. In the last hour, my  
17    colleague introduced an Exhibit No. 2 that -- do you still  
18    have that?

19          A     I do.

20          Q     Great. In the second to last paragraph, the last  
21    full paragraph, "People need clean water for their health."  
22    That should be on the first page.

23          A     Oh, okay.

24          Q     "About 117 million Americans, 1 in 3 people, get  
25    drinking water from streams that lack clear protection

1 before the Clean Water rule."

2 Are you -- have you seen this statistic before?

3 A I have.

4 Q Do you know where it came from? Where this number  
5 was -- came from?

6 A My understanding was that it was based on an  
7 analysis that Ben Grumbles asked to have prepared when he  
8 was the Assistant Administrator for Water.

9 Q When was he the Assistant Administrator for Water?  
10 Roughly.

11 A During the Bush administration.

12 Q Okay. Do you know who developed it? OID or  
13 someone else?

14 A I don't know that I know the answer to that. It's  
15 -- my understanding they asked for an analysis of the  
16 streams that are designated as drinking water sources and  
17 the catchments that support those streams, but I'm not sure  
18 exactly who did that analysis for him.

19 Q Okay. Let's talk a little bit about the  
20 conductivity Report, which I think was referenced earlier.

21 A Right. The Office of Research and Development's  
22 Report.

23 Q Mm-hmm.

24 A Correct.

25 Q When was that finalized?

1           A     I just can't remember the date for that, sorry.

2           Q     Who initiated this report? Who asked for it?

3           [Pause.]

4           A     I believe that it was already commissioned before  
5 I got to the agency. The intent was to support the  
6 rulemaking with science, but I'm not sure who, exactly,  
7 asked for it.

8           Q     Did you review the report?

9           A     I did.

10          Q     Did you or anyone in your office review Corps --  
11 comments by the Army Corps on the report?

12          A     I can't recall. Probably.

13          Q     Probably, but you're not sure.

14          A     I can't recall that specifically, but that would  
15 be likely that someone would have reviewed Corps comments on  
16 the report.

17          Q     Okay. I want to ask you a bit about some other  
18 documents that were created in conjunction with this work on  
19 WOTUS.

20                 Did the development of either the economic analysis for  
21 the rule, or the technical support document occur during  
22 your tenure at EPA? Perhaps it's easier to separate that  
23 out into two questions.

24          A     So there would have been economic analysis and  
25 supporting documentation developed for the proposed rule

1 when I was at EPA.

2 Q Can you speak to the technical support document?

3 A Probably not in depth, but I could try to answer a  
4 specific question if you have one.

5 Q Let's ask about the economic analysis first. Were  
6 you involved in its development?

7 A I may have been at meetings where it was  
8 discussed.

9 Q How about the development of the technical support  
10 document?

11 A Probably similar. You know, I don't have the  
12 expertise to develop those documents on my own.

13 Q Do you recall when you first saw either of these  
14 documents?

15 A No.

16 Q Regarding the technical support document, are you  
17 aware of any other rulemakings that involved creation of a  
18 similar document?

19 A Sure.

20 Q Which ones?

21 A Well there's technical support documents for every  
22 rule. There's economic analysis done, there's technical  
23 support documents done. I'm at least hard-pressed to think  
24 of a rule that doesn't have that. I think it's required.

25 Q Okay. Do you -- can you describe the Corps'

1 involvement in the development of either of these documents?

2 A No, I don't recall.

3 Q Did anyone at EPA discuss the level of the Corps'  
4 involvement in developing either of these documents that you  
5 remember?

6 A I just -- I don't recall.

7 Q Did you ever discuss efforts to conduct costs and  
8 benefits analysis for the rule?

9 A I certainly was in meetings where that was  
10 discussed.

11 Q Do you remember the specifics of these  
12 discussions?

13 A I think you would have to ask me a more specific  
14 question than that.

15 Q Fair enough. Do you ever recall discussion of  
16 efforts to show that rule benefits outweigh its costs?

17 A Well that's in general what you do in a  
18 rulemaking, is analysis the costs and benefits and the goal  
19 generally in rulemaking is to promulgate rules that have  
20 greater benefits than costs.

21 Q The rule was classified as economically  
22 significant. Do you know why agencies did not prepare a  
23 regulatory impact analysis?

24 A I don't recall.

25 Q Let's talk a little bit about Adjacency Limits

1 rule, and distance limits for adjacent waters were added  
2 into this final rule. Had the development of these  
3 adjacency limits begun prior to your departure from the  
4 agency?

5 A I don't know about the specifics about what was in  
6 the final rule and how it was developed. The issue of  
7 adjacency is an issue that has -- was discussed during the  
8 proposed rulemaking process. It's a longstanding issue  
9 involving the scope of the Clean Water Act.

10 [Pause.]

11 Q To the best that you can recall at the time you  
12 left, where was the discussion on adjacency limits? Had  
13 there been research or studies on how these might be set  
14 that were being discussed at the time?

15 A I think that the connectivity study has some  
16 bearing on the issue of adjacency. So that was at least  
17 well underway at the time.

18 [Pause.]

19 Q And throughout this process or discussion on  
20 adjacency limits, did you speak with the Corps about this  
21 issue?

22 A Absolutely. The Corps was involved in lots of  
23 meetings about issues like adjacency. Maybe not solely on  
24 that issue, but they would have been involved in discussions  
25 of that issue for sure.

1 Q Okay. Do you recall their position on adjacency  
2 limits?

3 A There are many different people at the Corps, with  
4 many different positions on lots of things. They had legal  
5 counsel, they had regulatory staff and a number of them have  
6 been working on these issues for a very long time, and they  
7 would have perspectives and we would discuss them at the  
8 meetings.

9 Q Let's talk a little bit about tribal engagement on  
10 rules of EPA. Who normally engages in tribal consultation  
11 for EPA rulings? Or at least during your time there.

12 [Pause.]

13 A I'm just not sure I know.

14 Q Okay. Had tribal consultation on the rule begun  
15 prior to your departure from the agency?

16 [Pause.]

17 A Yes. What I'm not certain about is formal versus  
18 informal consultation, but -- and when that would have  
19 started, but there certainly were -- there was a Tribal  
20 Water Council that I met with, and this would have been  
21 among the things that we would have discussed.

22 Q Would the Tribal Water Council be one of those  
23 standing meetings that you referenced earlier?

24 A It would. It wasn't a quarterly, I don't think.  
25 I'm not sure what the timeframe was, but it was either

1 annual or semi-annual, but they would have a meeting and I  
2 would attend it as -- I believe I was the chair.

3 Q To the best of your recollection, who from EPA  
4 participated in this tribal consultation process? You did  
5 just mention the Tribal Water Council, but for any other  
6 tribal consultation that may have been occurring that you  
7 recall. Who was involved in that?

8 A Well there was an office that was -- OITA, I think  
9 it is? I'm trying to think what those letters stand for,  
10 but the "T" is tribal.

11 Q Is that OITA?

12 A Yes, I think so. And that office was the  
13 facilitator of dialogues -- government to government  
14 consultation with tribes. That office would have been  
15 involved.

16 I actually had someone in my office, also, who was like  
17 the tribal liaison, or expert. Felicia Wright is her name.  
18 Isn't that great I came up with that? Felicia Wright, W-r-  
19 i-g-h-t.

20 So she would have been involved, and then I think the  
21 people that knew the substance of it, also, would have been  
22 involved.

23 Q Do you know what role the Army played in tribal  
24 consultation?

25 A I assume they have responsibilities for

1 consultation with tribes also, but I don't know that I am  
2 familiar with specifically, what their obligations are.

3 [Pause.]

4 Q For state outreach, did EPA conduct outreach with  
5 all 50 states? To your recollection.

6 A Yes. The Regions were in the lead on conducting  
7 outreach to the states and the territories within their  
8 geographic jurisdiction.

9 Q So that was primarily the Regions that would do  
10 that.

11 A There probably would -- I mean, there would have  
12 been some events that would have been national in scope, but  
13 that's one of the things that the Regional Administrators at  
14 EPA do, is meet regularly with their state counterparts and  
15 discuss issues of common interest, and this would have been  
16 among them.

17 Q Did you personally have any involvement in state  
18 outreach efforts?

19 A Yes. So we had periodic meetings with groups that  
20 represent the states.

21 So the Environmental Council of States, the Association  
22 of Clean Water Administrators, the Drinking Water  
23 Administrators may have been involved as well, but that was  
24 certainly something that I was engaged in periodically, is  
25 having -- those again were standing meetings that we had

1 with the state counterparts to discuss issues of interest.

2 [Pause.]

3 Q I will turn to Regulatory Flexibility Act. Were  
4 you involved with any discussions regarding certifying that  
5 the rule would not have a "significant economic impact on a  
6 substantial number of small entities" under the RFA?

7 A I may be -- been at meetings where that was  
8 discussed.

9 Q Do you recall who made the decision that the rule  
10 would not have a significant impact on a substantial number  
11 of small entities?

12 A No.

13 Q Are you aware that in October of 2014, the U.S.  
14 Small Business Administration Office of Advocacy submitted a  
15 formal comment that the agencies improperly certified this  
16 rule?

17 A October of 2014?

18 Q That's correct.

19 A So that sounds like after I left the agency.

20 Q Okay. Who at EPA would have advised the  
21 Administrator, or you, for that matter, on RFA or SBREFA  
22 compliance? SBREFA being the Small Business Regulatory  
23 Enforcement Fairness Act.

24 A It would have been the General Counsel's Office.

25 Q Were you engaged in any discussion about the use

1 of informal outreach to obtain input from the small business  
2 community as opposed to a more formal process?

3 [Pause.]

4 A I can't recall the details of that.

5 Q Perhaps then, do you recall engaging in  
6 discussions or conducting work related to how to satisfy a  
7 small business outreach? Or is it the same answer as  
8 before?

9 A Well that actually sounds familiar. I do recall  
10 discussing the need and our interest to get input from small  
11 business.

12 Q Do you remember the product of those discussions?  
13 Or the outcome?

14 A That's what I can't recall, specifically.

15 Q Did you receive or review comments from the small  
16 business community in response to EPA outreach efforts?

17 A I did not personally review comments that I  
18 recall.

19 [Pause.]

20 Q I have some questions on social media now. EPA  
21 engaged in social media promotion of the rule during its  
22 development. Did you discuss or were you involved in the  
23 use of social media?

24 This would include tweeting, creation of videos,  
25 posting content online, participating in Thunderclap or

1 other media with EPA?

2 [Pause.]

3 A I remember much more traditional things, like  
4 putting out press releases and that kind of thing.

5 Q So you are not aware of the EPA's -- or aware of  
6 how EPA conducted its social media work on this rule, such  
7 as who might have been in charge of that?

8 A Well that would have been the communications  
9 people who were in charge of it, but I can't -- I don't  
10 think I was involved in the specific things that you were  
11 just talking about.

12 Q Okay.

13 A Maybe they hadn't started that yet.

14 Q To the extent that you're aware regarding the  
15 social media outreach, is this something that's common at  
16 EPA? Has it been used in other rulemakings?

17 A I'm not sure.

18 Q So for the roll out of the proposed rule, can you  
19 describe your roll in that?

20 A I certainly was involved in briefings associated  
21 with the rollout of the proposed rule.

22 So like all those groups that we were talking about  
23 earlier, we would invite them to come in and get a briefing  
24 on the proposed rule, and ask questions, provide feedback.  
25 I was involved in a lot of that.

1           Mr. Hambleton. Okay. I would like to introduce --  
2 this will be Exhibit No. 3.

3                               [Stoner Exhibit No. 3 was marked for  
4                               identification.]

5           Mr. Hambleton. These are sections of an email. The  
6 first page is the header email, and the second, third and  
7 fourth pages are excerpts, but contiguous excerpts of a  
8 document that was attached with this email.

9           And these redactions, here, were made by the Oversight  
10 Majority staff and represent just personally identifiable  
11 information; phone numbers and email addresses.

12           Ms. Stoner. Okay.

13                               BY MR. HAMBLETON:

14           Q     Do you know who authored this document? Or which  
15 agency did?

16           A     So the names of the contacts are all EPA contacts,  
17 so it looks to me like a document prepared by someone at  
18 EPA.

19           Q     You're listed here as the EPA contact on several  
20 of these, I guess, calls that may or may not have been made.  
21 Did you make these outreach calls?

22           A     I don't recall all of them, but the intent was to  
23 make them, yes.

24           Q     Okay. Is Gilinsky -- is that Ellen Gilinsky?

25           A     That is.

1 Q And I'm sorry, what was her role again?

2 A She's a policy advisor in the -- or maybe she's a  
3 science advisor in the Office of Water. I'm not sure what  
4 her title is. She's a PhD scientist.

5 Q Okay, and did she report to you?

6 A Yes.

7 Q Okay.

8 A She used to run the Water Program in the State of  
9 Virginia.

10 Q Now on the top of the second page, here, it says  
11 "Phone calls to validators" on the top left corner.

12 A Mm-hmm.

13 Q Does validator mean a supporter of the proposed  
14 regulatory action?

15 A Not necessarily.

16 Q What does validator mean then? To your knowledge.

17 [Pause.]

18 A I'm not sure. Not all of these people would have  
19 been supporters, necessarily.

20 So I'm not sure what the distinction that the author  
21 was making between stakeholder and validator would be. It  
22 looks like stakeholder appears to be co-regulators in many  
23 instances; not sure.

24 Mr. McGrath. Who on the list of validators do you  
25 think wouldn't be supportive? Or wouldn't have been

1 supportive.

2 Ms. Stoner. Well the Water Advocacy Coalition is an  
3 industry group. They may or may not have been supportive of  
4 the proposed rule, but they have been involved in litigation  
5 against the agency on these issues -- or the Corps.

6 A lot of these are groups that I don't know today,  
7 anyway, exactly what their positions were. Again, a lot of  
8 them are co-regulators, like states, cities, counties.  
9 There's utilities, you know, there's just -- it looks like a  
10 wide-variety of different types of entities.

11 It looks like a list of entities, people who are very  
12 interested in the issues.

13 Mr. McGrath. Just quickly following up on that, the  
14 Water Advocacy Coalition. Was that someone you met with  
15 during the development of this rule?

16 Ms. Stoner. Yes. Virginia Albrecht has been very  
17 involved in these issues for decades.

18 Mr. McGrath. And you said -- yeah, and you said that  
19 this sheet represents Hunton and Williams here, represents  
20 industry, but do you know what organizations are included in  
21 that coalition?

22 Ms. Stoner. I couldn't tell you all of them right now,  
23 no. I believe one of them is the National Association of  
24 Home Builders.

25 Mr. McGrath. Okay.

1 Ms. Stoner. That's a client of Virginia Albrecht's.

2 Mr. McGrath. Okay.

3 BY MR. HAMBLETON:

4 Q On that first page there are two references to  
5 National Resource Defense Council. One is Dave White and  
6 farther down the page there is a John Devine, and in the EPA  
7 contact section its listed Stoner/Gilinsky. Do you recall  
8 if you made those calls to those contacts?

9 A I may have, this is after the two years had  
10 expired during which I wasn't speaking with my former  
11 colleagues. Dave White though, is -- I think that actually  
12 might be a mistake here.

13 Dave White is the former Head of the Natural Resource  
14 Conservation Service at USDA, and he's a consultant to the  
15 agriculture industry. He never has worked at the Natural  
16 Resources Defense Council as far as I know.

17 Q Okay. Do you recall discussing -- did you make  
18 contact with Jon Devine then?

19 A I don't know. I'm not listed as contacting Jon  
20 Devine.

21 Q So how is it that you know -- how is it decided  
22 who would be on this list?

23 A Again, I think it's people who had expressed an  
24 interest at some of the meetings that I was talking about in  
25 the rule that -- so ensuring that we were contacting people

1 who were interested. That was the goal.

2 Q How is it decided who you would call?

3 A I think in general the decision was made based on  
4 who had a good contact at a particular place. So I think  
5 that's true of me, as well as, others.

6 BY MR. MCGRATH:

7 Q On page -- the last page of this document where it  
8 talks about the phone calls to interpreter validators,  
9 Wideman (phonetic) or Weedeman (phonetic). Do you know who  
10 this is?

11 A Yeah, that's Alison Wiedeman. She was -- well she  
12 held more than one position while I was at the agency. At  
13 one point she ran the Rural Branch in the Office of  
14 Wastewater Management, and at one point she was the  
15 Agriculture Advisor to the Administrator, and I can't tell  
16 you which she was at this time.

17 Q Do you know why the group, the Farm Bureau would  
18 have been left off this list of contacts?

19 A I don't.

20 Mr. Hambleton. Is this sort of a practice -- preparing  
21 a document like this, and then having these sort of people,  
22 including yourself, sort of involved. Is that common with  
23 rule rollouts?

24 Ms. Stoner. Yes. Particularly ones in which there's  
25 substantial interest. It's a courtesy, usually.

1           Mr. McGrath. I made these calls myself in my previous  
2 life.

3           [Counsel conferred.]

4           Mr. Hambleton. Introduce as Exhibit 4; right? This is  
5 a copy of the Interpretive rule.

6                                   [Stoner Exhibit No. 4 was marked for  
7 identification.]

8           Ms. Stoner. Thank you.

9           Mr. Hambleton. You're welcome. If you just want to  
10 take a moment to brush up on that.

11          Ms. Stoner. Okay. Here's my name on it. There you  
12 go. Okay.

13                           BY MR. HAMBLETON:

14          Q       So outside of signing it, what was your  
15 involvement in the development of this rule?

16          A       I was certainly engaged in the development of it.  
17 In discussions with the Army, with USDA, others at the  
18 agency, so forth.

19          Q       What was the purpose of this rule? Why did EPA  
20 and the Army decide to pursue this?

21          A       So the purpose of it was to clarify the permitting  
22 exemption in 404-F. To, I think, allay concerns that those  
23 exemptions would be narrowly interpreted by the EPA or the  
24 Corps.

25          Q       I'm sorry, there is a concern about a narrow

1 interpretation or --

2 A Yes. We -- EPA did this, I guess to try to  
3 reassure operators in agriculture that these exemptions  
4 which were in this statute, but had not been interpreted in  
5 a document like this, that they would be interpreted  
6 broadly. That the exemptions would be interpreted broadly.

7 Q What science is this based on? Or what science  
8 was used to inform it?

9 A It's actually not as much about science as it is  
10 about agricultural practices, and we relied on our  
11 colleagues at USDA to help us understand what normal  
12 farming, ranging and silviculture activities are.

13 Q Did -- so you consulted with USDA in creating this  
14 rule?

15 A We did.

16 Q Was USDA supportive of the rule?

17 A Of the Interpretive rule?

18 Q Yes.

19 A They were.

20 [Pause.]

21 Mr. McGrath. How would you say the response was back  
22 when this Interpretive rule went out?

23 Ms. Stoner. It was not as positive as we had  
24 anticipated from the agriculture community.

25 Mr. McGrath. Do you think that led to part of why it

1 was withdrawn at almost a year later?

2 Ms. Stoner. That was the principle reason it was  
3 withdrawn, is that it had been an attempt to address what we  
4 believed were concerns from agriculture and it was not  
5 viewed favorably by the people that we were attempting to  
6 allay the concerns on.

7 So we said, "Would you like us to withdraw it?"

8 And they said, "Yes," and we did.

9 So that's what happened.

10 Mr. Hambleton. All right. During your work on WOTUS,  
11 did anyone ever suggest to you or other staff at EPA to  
12 treat communications regarding the rule in a certain manner?  
13 Specifically those made to the public or that may become  
14 part of the administrative record?

15 Ms. Stoner. I don't understand the question.

16 Mr. Hambleton. Did you ever see guidance from anyone  
17 at the agency about what should or shouldn't go into the  
18 administrative record? Guidance or instruction.

19 [Pause.]

20 Ms. Stoner. I don't believe I was involved in  
21 compiling an administrative record. I think of that as  
22 something that is done in litigation.

23 [Pause.]

24 Mr. McGrath. Was there ever any guidance or discussion  
25 from anyone in the agency to be careful about what you said

1 in public or put in an email because it may be used later?  
2 Whether in litigation or administrative record.

3 Ms. Stoner. I would say there was a general caution at  
4 EPA to ensure that things that you said publically and put  
5 in emails were things that you wanted to be public. And  
6 that applied to this as to other things.

7 So there were certainly cautions that we were  
8 representing the United States and the agencies in these  
9 matters and should be respectful of that position.

10 [Pause.]

11 Mr. Hambleton. Did anyone ever direct you or other  
12 staff to speed up the process of your work on the  
13 rulemaking?

14 [Pause.]

15 Ms. Stoner. Not in any unusual sort of way. If we  
16 were behind in deadlines, someone may have said, "Keep it  
17 moving," that kind of thing.

18 Mr. Hambleton. If someone would say that, who would  
19 that -- where would that come from? Administrator? Deputy  
20 Administrator? Someone outside the agency?

21 Ms. Stoner. Probably. If it came to me it probably  
22 would have come from Bob Perciasepe.

23 Mr. Hambleton. Were you ever told in any way to  
24 achieve an administration objective on worth?

25 Ms. Stoner. I have trouble understanding that

1 question, also.

2 Mr. Hambleton. I think that this may have been touched  
3 upon briefly in the last hour, but did anyone during your  
4 leadership at EPA that you reported to or anyone from  
5 outside the EPA ever say, have sort of a, ever have an  
6 objective regarding an outcome on the WOTUS rule that you  
7 were instructed to arrive at?

8 Ms. Stoner. Well we had goals that for clarifying the  
9 scope of the Clean Water Act and ensuring the waters that  
10 were connected were protected to achieve the goals of the  
11 Clean Water Act.

12 And I think it was the Administration's objective to do  
13 that -- to clarify and to make sure the waters that were  
14 intended to be protected by Congress under the Clean Water  
15 Act were, in fact, being protected.

16 BY MR. MCGRATH:

17 Q On that idea, I guess as you were working on this  
18 regulation, there were a whole bunch of different  
19 regulations going on at the same time; right?

20 Who sets the priority of different regulations in the  
21 Office of Water? Specifically, water-related regulations.  
22 Because obviously there's a large unified regulatory agenda,  
23 but kind of the mechanism. How does that go forward?

24 A Well I think that the recommendations come up from  
25 the offices, so each office in the Office of Water would

1 have certain things that they were planning to do, whether  
2 it was a science document or a guidance document or rule,  
3 and periodically we would discuss those and what the  
4 priorities were. And again, Bob Perciasepe, the Deputy  
5 Administrator, would have probably been involved in planning  
6 discussions.

7 Q Does it ever come up with timing from the  
8 different offices under the Office of Water? The sub-  
9 offices. When it came up, would it ever be like, "Well we  
10 need you to speed this one along, we need this one to get  
11 done quicker? You can put this one on the backburner." Was  
12 that ever a discussion?

13 A Yes.

14 Q And do you know who made that decision? Would it  
15 be Bob Perciasepe? Would it be yourself? Would it be an  
16 administrator? A combination?

17 A I think it would have been, in most cases, at my  
18 level, the decisions were made about -- what I would think  
19 about is capacity to manage multiple rulemakings and laws  
20 within the Office of Water.

21 Q And would you ever move people between different  
22 offices and other frequent wetlands or drinking water to try  
23 to add capacity in different areas?

24 A Yes.

25 Q Were people added to the capacity to work on the

1 WOTUS rule to get that moving with all the huge amount of  
2 public comments and things like that.

3 A I think there may have been someone temporarily  
4 assigned to the Office of Wetlands Oceans and Watersheds who  
5 had previously been in the Office of Science and Technology.

6 Q Was anyone ever pulled off of the Drinking Water  
7 Office to go over to Wetlands for this that you know about?

8 A Not that I recall.

9 Mr. McGrath. I'm going to -- we have a couple of other  
10 kind of side pieces that we have different investigations  
11 going that also fall under the Office of Water that we may  
12 ask a few questions about here towards the end, and  
13 specifically, we obviously have been doing a lot of work on  
14 Flint, and I want to kind of discuss the timeline for the  
15 Lead and Copper rule.

16 It hadn't been updated since '07, and I'm trying to  
17 understand. Do you know why the timeline slipped so many  
18 times?

19 Ms. Stoner. Is this a question that's covered by the  
20 scope of what I was asked to come discuss?

21 Mr. Coburn. That's a good question. Could you repeat  
22 the question? Do you mind?

23 Mr. McGrath. Sure. We were talking about the  
24 regulatory agenda, and here I was kind of moving on to some  
25 other issues.

1           Mr. Coburn.   Sure, yeah.

2           Mr. McGrath.   Usually we don't limit the scope, is my  
3 understanding.

4           Mr. Coburn.   Well there may not be an issue, but if you  
5 could repeat the question, I'll just go over the thought.

6           Mr. McGrath.   Sure.  We were talking about, in this  
7 case, the Lead and Copper rule.

8           Mr. Coburn.   Mm-hmm.

9           Mr. McGrath.   Which is another rule under the Office of  
10 Water, and it was last updated in '07, and as you look  
11 through the regulatory agendas, the time of when it was  
12 going to be finalized slipped a few times.  It slipped after  
13 you left, also, but we're trying to understand why that  
14 timeline may have slipped.

15          Mr. Coburn.   In Lead and Copper.

16          Mr. McGrath.   Lead and Copper, yes.

17          Mr. Coburn.   Gotcha.  Can you guys give me just 30  
18 seconds to talk to Nancy?

19          Mr. McGrath.   Yeah, absolutely.

20          Mr. Coburn.   Nancy, can we just step right outside?

21          Mr. McGrath.   Let's go off the record.

22          [A brief recess was taken at 12:54 p.m.]

23          Mr. Hambleton.  Yes.  Let's get back on the record.

24          Mr. Longani.   If we could just -- furtherance of what  
25 we were just talking about, you had just simply said that

1 this is beyond the scope of what the Witness came here to  
2 talk about, and we would certainly, as counsel, obviously  
3 will be advising this client, but we would certainly make  
4 that point, this is certainly beyond the scope of what Ms.  
5 Stoner has been called to testify about today in front of  
6 the committee.

7 Mr. Coburn. And that's the only issue for us in that  
8 we appreciate, very much, you all giving us a chance to go  
9 out and chat about it. She just wasn't expecting a question  
10 about this, because it's not delineated in the letter.

11 That being said, we understand that you folks are  
12 trying to get a number of things out of the way, and may  
13 very well feel this is related, so if it's possible, not to  
14 go sort of too far down that track, but you know, if you  
15 wanted to ask a few questions about it, from our point of  
16 view, it's no problem.

17 EXAMINATION [Resumed]

18 BY MR. MCGRATH:

19 Q Okay. We appreciate that. We don't plan on  
20 having a long dig into this, but that's -- if you -- as I  
21 mentioned, it would be great to hear kind of the why.

22 Obviously the rule last updated in '07 with some  
23 temporary measures to date, hasn't been updated, but over  
24 the time as we watch the regulatory agenda, the time  
25 slipped.

1 I'm just kind of wondering what your role was in that -  
2 - and I'm not saying it was you caused it to slip, but just  
3 what -- why it would have done that.

4 A Yeah. So my understanding about that was that the  
5 agency decided to seek additional guidance from the National  
6 Drinking Water Advisory Committee. And that that process  
7 took some time.

8 Q Were you ever part of any discussions about the  
9 requirement being updated every six years and trying to hit  
10 those deadlines? Or was it more a question to seek the  
11 additional guidance.

12 A I was involved in discussions about updating the  
13 Lead and Copper rule and the Director of the Drinking Water  
14 Office, Peter Grevatt, talked with me about his desire to  
15 get additional input from the National Drinking Water  
16 Advisory Committee to support the agency's decision making.

17 Q Do you know if he's still with the agency?

18 A He is.

19 Q He is. In that same role?

20 A He is.

21 [Pause.]

22 Q Was that ever discussed, the Lead and Copper rule  
23 timing at a higher level with Bob Perciasepe or the  
24 Administrator while you were there?

25 A I don't recall.

1 [Counsel conferred.]

2 Mr. McGrath. Yeah, all right. We'll go off the  
3 record.

4 [A recess was taken at 1:00 p.m.]

5 Mr. Longani. Okay. I am ready to go on. It is now  
6 1:41 p.m. And as I mentioned to you, Ms. Stoner, I don't  
7 expect to take the full hour.

8 Ms. Stoner. Excellent.

9 [Pause.]

10 Mr. Longani. Ms. Stoner, you're familiar with the  
11 Regulatory Flexibility Act of 1980. Is that correct?

12 Ms. Stoner. I am a little bit familiar with it.

13 Mr. Longani. Okay.

14 Ms. Stoner. I am not an expert in that.

15 Mr. Longani. I am going to mark this as -- I believe  
16 we are up to Exhibit 5. Is that correct?

17 Voice. Yes.

18 [Stoner Exhibit No. 5 was marked  
19 for identification.]

20 Mr. Longani. Do you need a copy Mr. Coburn?

21 Mr. Coburn. Oh, thank you so much. I appreciate it.

22 Mr. Longani. Sure. And for the record, Exhibit 5 is  
23 the final report of the discretionary small entity outreach  
24 for the Clean Water rule, definition of Waters of the United  
25 States under the Clean Water Act final rule; it is dated May

1 2015.

2 Ms. Stoner, I'm going to direct your attention to page  
3 2, and specifically, the fifth paragraph on that page. It  
4 starts with the word, "Regulatory Flexibility Act." If you  
5 could take a moment to read that paragraph and look up at me  
6 when you're done, I'll continue with my questions.

7 Ms. Stoner. Okay.

8 EXAMINATION [Resumed]

9 BY MR. LONGANI:

10 Q That section that I referred you to states, "The  
11 Regulatory Flexibility Act generally requires an agency to  
12 prepare a regulatory flexibility analysis of any rule  
13 subject to notice and rulemaking requirements under the  
14 Administrative Procedure Act or any other statute unless the  
15 agency certifies that the rule will not have a significant,  
16 economic impact on a substantial number of small entities.  
17 Small entities includes small businesses, small  
18 organizations, and small governmental jurisdictions."

19 Is that consistent with your understanding of the  
20 Regulatory Flexibility Act and its requirements, Ms. Stoner?

21 A I don't have any reason to disagree with it.

22 Q Would you agree that the agencies did indeed  
23 certify that the Clean Water rule would not have a  
24 significant economic impact on a significant number of small  
25 entities?

1           A     I believe this may have been done after I left the  
2 agency.

3           Q     That is correct. It is dated May 2015. Do you  
4 have knowledge of whether or not the agencies certified that  
5 the Clean Water rule would not have a significant economic  
6 impact on a substantial number of small entities?

7           A     I don't know whether such a certification was made  
8 earlier than this.

9           Q     Okay. [Pause.] I'm going to ask you to turn to  
10 page 19.

11          A     Okay.

12          Q     And I'm going to ask you to read the last  
13 paragraph on page 19.

14          A     Okay. Mm-hmm.

15          Q     That paragraph states, "EPA and Army worked with  
16 SBA and other key agencies to discuss whether or not SBREFA  
17 would be triggered, and determined that it would not be.

18                Given the vitals for roles small entities play in  
19 implementation of the CWA, the agencies decided to solicit  
20 technical input through outreach. Such outreach, although  
21 voluntary, is also consistent with the President's January  
22 18, 2011 memorandum on regulatory flexibility, small  
23 business and job creation which emphasizes the important  
24 role small businesses play in the American economy.

25                This process has enabled the agencies to hear directly

1 from these representatives at a preliminary stage about how  
2 the agencies should approach this complex question of  
3 statutory interpretation."

4 Ms. Stoner, were you involved in any of these outreach  
5 efforts to small businesses during your tenure? To the best  
6 of your recollection.

7 [Pause.]

8 A Oh yeah, here we go. Pages 7 and 8 remind me that  
9 there were such outreach meetings in 2011.

10 Q Okay. And that on page 3, decided to, Ms. Stoner,  
11 I believe this report states, and again, I'm quoting page 3,  
12 first incomplete paragraph right before the bullet points,  
13 last sentence says, "The agencies conducted outreach  
14 meetings in 2011 and 2014, designed to exchange information  
15 with small entities interested in this action."

16 A Mm-hmm.

17 Q Do you recall those outreach meetings?

18 A Not in much detail.

19 Q Okay. Do you have any reason to believe they did  
20 not occur?

21 A I don't.

22 Mr. Longani. I am going to show you now -- I am going  
23 to mark this as Exhibit 6.

24 [Stoner Exhibit No. 6 was marked  
25 for identification.]

1           Mr. Longani. Ms. Stoner, on the same issue of meetings  
2 with small entities, I'm going to show you Exhibit 6 and  
3 Exhibit 7, which are emails.

4                                 [Stoner Exhibit No. 7 was marked for  
5                                 identification.]

6           Mr. Longani. I will also hand you Exhibit 7.

7           Ms. Stoner. Thank you.

8           John, did you want copies over there, too?

9           Mr. Skladany. I got them.

10          Mr. Longani. You got them. Okay.

11          Okay. And I'm going to ask Ms. Stoner, be focusing in  
12 on -- as to Exhibit 6, I'm going to ask you to look at the  
13 last email from David Evans to several people, including  
14 yourself, dated August 25, 2011.

15          Ms. Stoner. Mm-hmm.

16          Mr. Longani. And as to Exhibit 7, I'm going to ask you  
17 to focus on the one email that's complete from David Evans  
18 to several people, including yourself, that's dated  
19 September 26, 2011.

20          Ms. Stoner. Mm-hmm.

21          Mr. Longani. And if you could just take a moment to  
22 read both of those emails.

23                                 [Pause.]

24          Ms. Stoner. Okay.

25                                 BY MR. LONGANI:

1           Q     Okay.  So in Exhibit 6, this email from Mr. Evans  
2 to several people, including yourself, and for the record,  
3 Ms. Stoner is actually copied in the email as to Seth Oster.

4           Mr. Evans states in part, and I'm quoting from the  
5 first two paragraphs, "Seth, we just finished a pre-brief  
6 meeting with Nancy Stoner and Bob Sussman on the WUS  
7 rulemaking.  We meet with administrators, action tomorrow  
8 morning, a.m., 9:45.

9           One issue we briefly touched on is important for your  
10 consideration and be ready to send invitation letters to  
11 small entity representatives, small business, small local  
12 government, soon, perhaps within a week, ten days.

13           This relates to a discretionary outreach meeting with  
14 these parties that we have agreed to in lieu of a formal  
15 SBREFA panel."

16           Ms. Stoner, does that refresh your recollection in  
17 terms of these outreach meetings and when they were taking  
18 place?

19           A     Yes.

20           Q     Okay.  And now I am going to direct your attention  
21 to Exhibit 7.  Again, the email on September 26, 2011 from  
22 David Evans to several people, including yourself and  
23 Margaret Gaffney-Smith of the Army Corps.

24           And it says, "Dear Small Entity Participant, on behalf  
25 of the EPA I would like to invite you to participate in a

1 meeting comprised of small entity participants, convened to  
2 discuss EPA's efforts to clarify waters protected by the  
3 Clean Water Act."

4 Do you see what I'm referencing?

5 A Yep.

6 Q Ms. Stoner, do you have any doubt that outreach  
7 took place between the EPA, the Army Corps and small entity  
8 participants as it pertains to the Clean Water rule?

9 A Well the only way it wouldn't have happened is if  
10 nobody came because it looks like we were inviting them to  
11 come, yes.

12 Q And I see on this that the Army Corps was not  
13 included on this email. Is that correct?

14 A Yes, I -- and again, they were often at the  
15 meetings that we had -- outreach meetings.

16 Q And why were they at these meetings? Or why were  
17 they invited?

18 A Well they were invited because it was a joint  
19 rulemaking, and also because they had different knowledge  
20 than the agency did because they actually are the principal  
21 implementers of both the jurisdictional determinations and  
22 the permitting programs under the Clean Water Act.

23 [Pause.]

24 Q I'm going to ask you again, to look at Exhibit 5.

25 A Mm-hmm.

1 Q The final report.

2 A Oh no, I don't have it.

3 Q Yeah, and I'm going to ask you to turn to page 20,  
4 please.

5 A Okay.

6 Q Now I'm going to direct your attention to the top  
7 of the page, starting with, "The public comments."

8 A Mm-hmm.

9 Q And taking it all the way through, halfway down  
10 the page where the adjacency section starts.

11 A Mm-hmm.

12 Q If you could just read up to that point, please.

13 A Mm-hmm. [Pause.] Okay.

14 Q That section that I just asked Ms. Stoner to read,  
15 and again, page 20, Exhibit 5, states in part, "The public  
16 comments identified a number of areas where the rule could  
17 be more effective in protecting clean water. It could be  
18 clearer and easier to understand, could help to reduce  
19 potential burdens on farmers and small businesses, and could  
20 be more responsive to the needs of states and local  
21 governments.

22 Below are some of the major comments the agency heard  
23 during meetings with stakeholders and in public comments  
24 submitted to the agencies."

25 And below that is listed [counting] seven comments.

1 And I continue, "These and other comments received were  
2 considered in the development of the final rule."

3 Ms. Stoner, do you have any reason to believe that that  
4 statement is untrue? And the statement I'm referring to is,  
5 "These and other comments received were considered in the  
6 development of the final rule."

7 A So again, I was not involved in developing the  
8 final rule, but the types of comments here are ones that we  
9 received throughout the rulemaking process and considered in  
10 the proposed rule as well.

11 Q And based on your rulemaking experience,  
12 understanding that you weren't involved in the final rule  
13 phase, would it have been something, generally, during your  
14 rulemaking experience, you would have considered, in the  
15 development of the final rule?

16 A The input received from such a process would have  
17 been considered in developing a final rule.

18 Q Thank you. My colleagues in the last hour asked  
19 you briefly about the decision that was made at some point  
20 to do a SBREFA-like process. Do you recall that discussion?

21 A I do recall discussing that issue, yes.

22 Mr. Longani. I give you now -- this is Exhibit 8.

23 [Stoner Exhibit No. 8 was marked for  
24 identification.]

25 Mr. Longani. I'm going to ask you to read the last

1 email which is dated August 8, 2011 from Kia Dennis to David  
2 Evans and Jim Laity, amongst other people, and it continues  
3 on to the second page.

4 [Pause.]

5 Ms. Stoner. Okay.

6 BY MR. LONGANI:

7 Q Okay. And on that last email from Ms. Dennis to  
8 David Evans and Jim Laity, Ms. Dennis says, "WOTUS Team,  
9 I've briefed the Advocacy Management Team on our meeting  
10 last Wednesday, and there's one point we wanted to clarify.  
11 It is our understanding that EPA believes it will be able to  
12 certify that the rule will not have a significant economic  
13 impact on a substantial number of small entities.

14 If EPA is unable to certify, it is our position that  
15 EPA would then have to conduct a formal SBREFA panel as part  
16 of the rulemaking process. I assume that as Jim Keating  
17 indicated in a follow-up to Kia's email, we would be  
18 certifying \*inaudible\* because all impacts would be  
19 indirect, as has been EPA's standard position for a  
20 definitional rule."

21 Ms. Stoner, to the best of your recollection, is that  
22 indeed correct? Is that indeed, the EPA's position that  
23 because all impacts would be indirect, and that this is a  
24 definitional rule, there was no need to conduct a formal  
25 SBREFA panel? To the best of your recollection, if you

1 know.

2 A I do recall discussion of that issue. I believe  
3 that was the recommendation of OGC.

4 Q Okay. And this was known to the small business  
5 groups as of August 8, 2011. Is that correct? Based on  
6 this email from Kia Dennis to David Evans and Jim Laity?  
7 Let me withdraw that question. EPA's position was known  
8 with the small business advocacy group as of August 8, 2011  
9 as indicated by this email from Kia Dennis to David Evans.  
10 Would you agree with that?

11 A I'm having difficulty figuring out why Damaris  
12 Christensen's name is at the bottom. I guess I'm a little  
13 confused about the email trail. Kia Dennis appears to be  
14 from the SBA.

15 Q That's correct.

16 A She's on multiple emails here, about this topic.  
17 So it appears that the SBA was aware of the agency's  
18 position.

19 Q Okay.

20 A I'm not sure which email is from Kia.

21 Q Okay. [Pause.] Jim Laity at OIRA told the  
22 committee that as part of the discussion about whether EPA  
23 would certify the rule or not, the EPA made a commitment to  
24 conduct a SBREFA-like process, and to make it as much like  
25 the SBREFA process as possible.



1 BY MR. BURNS:

2 Q So we're going to -- we talked earlier, our  
3 colleagues, we -- you discussed about the tribal  
4 consultations.

5 A Yes.

6 Q So have you actually seen the final rule? I know  
7 that you were at -- you had left EPA by that time.

8 A I have not read all of the final rule.

9 Q Okay.

10 A I just read the trade press.

11 Q I have a copy for you.

12 A Okay. It -- is it marked right now? Do you want  
13 it marked?

14 Mr. Burns. Oh. We're going to mark it as Exhibit 9.  
15 Thank you.

16 [Stoner Exhibit No. 9 was marked for  
17 identification.]

18 Mr. Burns. If you will turn to page -- and I tabbed it  
19 -- that's page 337-103 of the final rule, and I have  
20 highlighted the relevant portions, and it states, "The  
21 agency's beginning consultation with Federally-recognized  
22 Indian tribes under Clean Water rule as defining Waters of  
23 the United States on October 2011.

24 And that the consultation and coordinating process,  
25 including providing information on the development of an

1 accompanying science report on the connectivity of streams  
2 and wetlands continued in stages over a four year period  
3 until the close of the public comment period on November 14,  
4 2014."

5 Ms. Stoner, do you have any reason to believe that this  
6 is not an accurate statement?

7 Ms. Stoner. I don't.

8 Mr. Burns. Okay. And further, let's actually turn to  
9 another document.

10 Are you familiar with the final summary of tribal  
11 consultation for the Clean Water rule, definition of Water  
12 the United States under the Clean Water Act final rule? It  
13 was issued on May of 2015. I know you had left EPA by then.

14 Ms. Stoner. I'm not familiar with it.

15 Mr. Burns. I'll mark it as Exhibit 10, I believe.

16 [Stoner Exhibit No. 10 was marked for  
17 identification.]

18 Ms. Stoner. Thank you.

19 BY MR. BURNS:

20 Q And if you turn to page 4, Ms. Stoner --

21 A Okay.

22 Q And it reads, let's see, last paragraph on page 4,  
23 "On October 4, 2011, EPA sent a Tribal consultation  
24 notification letter to all federally-recognized tribal  
25 leaders via mail, email, inviting tribal officials to

1 participate in consultation and coordination events and  
2 provide comments to EPA and coordination."

3 Do you have any basis to believe that this statement is  
4 not true?

5 A I don't.

6 Q Okay. And also on page 4, it states, "In the  
7 course of this consultation, EPA coordinated with Army and  
8 Army jointly participated in aspects of the consultation  
9 process."

10 Any basis to believe that this statement is not true?

11 A I don't.

12 Q And on page 7 of the document, it states, "On May  
13 21, 2015, EPA's Office of International and Tribal Affairs  
14 concluded the adequacy of the agency's tribal consultation."

15 Again, any basis to believe that this statement is not  
16 accurate?

17 A No, and it helps me remember what OITA stood for.  
18 I knew the "T" was for tribal.

19 Mr. Longani. Do you have any basis to challenge that  
20 finding, Ms. Stoner?

21 Ms. Stoner. No, I don't. It's normal to do formal,  
22 government-to-government consultation with tribes on matters  
23 of interest to them, and this was a matter of interest to  
24 them.

25 Mr. Burns. Okay. And Ms. Stoner, are you also

1 familiar with the EPA policy on consultation and  
2 coordination with Indian tribes dated May 4, 2011?

3 Ms. Stoner. That sounds like the one I was just  
4 referencing. Yes, I am familiar with that.

5 Mr. Longani. I'm going to mark this as Exhibit 11.

6 [Stoner Exhibit No. 11 was marked for  
7 identification.]

8 Mr. Longani. Here you go, Ms. Stoner.

9 Ms. Stoner. Mm-hmm.

10 Mr. Burns. And on page 7 of the policy -- you can turn  
11 to Page 7 of the policy, under sub-section D.

12 Ms. Stoner. Page 7, sub-section D. Got it.

13 Mr. Burns. And it states, "There is no single formula  
14 for what constitute appropriate consultation."

15 Based on EPA's policy, is it reasonable to conclude  
16 that tribal consultations could include webinars,  
17 teleconferences and face-to-face meetings?

18 Ms. Stoner. I believe the agency used all of those  
19 approaches; that is correct.

20 Mr. Longani. Is there anything improper about using  
21 those venues -- avenues of communication with tribes?

22 Ms. Stoner. It's a great way to reach people who are  
23 scattered across the United States, so no, those are  
24 perfectly appropriate uses of modern technology for  
25 consulting.

1           Mr. Burns. And Ms. Stoner, after conducting tribal  
2 consultations, the agencies concluded that the rule would  
3 not have had an impact on the tribes as specified under  
4 Executive Order 13175. Any basis to believe that that  
5 statement isn't true?

6           Ms. Stoner. Could you tell me where that is?

7           Mr. Burns. Let's see. No it is just a general  
8 statement that I am making, that the agencies made.

9           Ms. Stoner. Okay, it's not in this document.

10          Mr. Burns. Right. So they were just concluding that  
11 the rule would not have had an impact on tribes. So do you  
12 have any basis to believe that statement isn't true?

13          Ms. Stoner. It sounds similar to the findings, under  
14 the Regulatory Flexibility Act and SBREFA. I assume the  
15 basis is the same, but I do not recall.

16          Mr. Burns. Okay. Thank you.

17          Mr. Longani. Ms. Stoner, are you familiar with the  
18 GAO?

19          Ms. Stoner. I am.

20          Mr. Longani. What's your understanding of their role  
21 as a Federal agency?

22          Ms. Stoner. So they do investigations for Congress.

23          Mr. Longani. Would you agree that they are an  
24 independent agency?

25          Ms. Stoner. Yes.

1           Mr. Longani. They were not a party to the Clean Water  
2 rulemaking. Is that correct?

3           Ms. Stoner. No, they were not.

4           Mr. Longani. Were you aware that following the  
5 completion of the final Clean Water rule, the GAO conducted  
6 a review of the agency's compliance with all relevant  
7 administrative requirements, including the economic analysis  
8 and the Administrators Procedures Act, and concluded that  
9 the agencies met every requirement?

10          Ms. Stoner. I actually am not aware of that.

11          Mr. Longani. I'm going to mark this as Exhibit 12.

12                                   [Stoner Exhibit No. 12 was marked for  
13                                   identification.]

14          Mr. Longani. Ms. Stoner, I'm going to ask you read  
15 that first page.

16                                   [Pause.]

17          Ms. Stoner. Okay.

18                                   BY MR. LONGANI:

19          Q       Okay. At the very top of the page, the report  
20 reads at the top, under the title, it reads, "GAO reviewed  
21 the Department of Defense, the Department of the Army Corps  
22 of Engineers, the Environmental Protection agency,  
23 collectively, the agencies, new rule on the Clean Water rule  
24 and the Definition of the Waters of the United States.

25                                   GAO found that one, the final rule does not establish

1 regulatory requirements, but instead, defines the scope of  
2 waters protected under the Clean Water Act, in light of the  
3 statute, science, Supreme Court decisions and the agency's  
4 experience and technical expertise; and two, the agencies  
5 complied with the applicable requirements in promulgating  
6 the rule."

7 Do you see that?

8 A I do.

9 Q Ms. Stoner, GAO's first finding that the rule does  
10 not establish regulatory requirements, but instead, defines  
11 the scope of covered waters under the Clean Water Act. Why  
12 is that finding significant?

13 A So it's significant because it is relevant to the  
14 issues of whether or not certain requirements under SBREFA  
15 or the RFA apply.

16 Q Would you agree with the GAO's conclusion that the  
17 final rule does not establish regulatory requirements, but  
18 instead, defines the scope of covered waters?

19 A That is what the rule was intended to do, was  
20 determine the scope of waters covered in regulatory  
21 requirements would come from other rules.

22 Q And understanding that you were not involved in  
23 the final rule.

24 A That's correct.

25 Q The report includes an assessment of various

1 regulatory requirements that were complied with and  
2 concludes, for example, as to the cost of benefit analysis,  
3 there was a finding of compliance. Do you have any reason  
4 to disagree with the GAO's finding?

5 A I don't.

6 Q As to the Regulatory Flexibility Analysis, again,  
7 the GAO made a finding of compliance. Do you have any  
8 reason to disagree with the GAO's finding of compliance as  
9 to the Regulatory Flexibility Analysis?

10 A I don't.

11 Q Any reason to disagree with the GAO's finding of  
12 compliance as to the Unfunded Mandates Reform Act of 1995?

13 A I don't.

14 Q Any reason to disagree with the GAO's finding of  
15 compliance as to the Administrative Procedure Act?

16 A I don't.

17 Q And any reason why you might disagree with the  
18 GAO's finding of compliance as to the Paperwork Reduction  
19 Act?

20 A I don't.

21 Q And finally, any reason to disagree with the GAO's  
22 finding of compliance as to Executive Orders 12866 and  
23 13563?

24 A I don't.

25 Q Do you have any basis to suggest that GAO did not

1 conduct and independent analysis of the EPA and Army's  
2 regulatory compliance in the Clean Water rule rulemaking?

3 A I don't have knowledge of exactly what the GAO  
4 did, but they are an independent entity.

5 Q Do you believe the GAO's findings merit  
6 significant weight? If you know. Do you have an opinion?

7 A I don't think I have an opinion on that.

8 Q Okay.

9 A And all of those were based on my knowledge of the  
10 final rule.

11 Mr. Longani. Absolutely.

12 That's all I had.

13 [Counsel conferred.]

14 Mr. Burns. So Ms. Stoner, could you describe in your  
15 tenure at the EPA during this particular Waters of the U.S.  
16 investigation, the relationship between the EPA, the Army  
17 and the Army Corps of Engineers since it was a joint  
18 rulemaking?

19 Ms. Stoner. Yes. So the Assistant Secretary of the  
20 Army for Civil Works, Jo-Ellen Darcy, was the lead for the  
21 Army, and she had certain people who worked within her  
22 office, including her counsel, who were involved in advising  
23 her about the rulemaking.

24 Meg Smith was the Chief of the Regulatory Affairs for  
25 the Corps at that time, and she was the lead for the Corps

1 on the rulemaking, so those two offices represented the Army  
2 together.

3 And at EPA, the Office of Water was the lead program  
4 office on this. The Office of General Counsel advised us on  
5 it, and we met with the Corps frequently to develop  
6 documents together, including rulemaking documents and press  
7 releases and other kinds of public documents, and discuss  
8 the full range of issues and comments that were received and  
9 hashed out everything we could at the staff level and  
10 elevated those issues we couldn't resolve at the staff level  
11 and they were resolved at that level.

12 Mr. Burns. And are you familiar with a document, I  
13 believe this will be Exhibit 13, if I'm not mistaken,  
14 Memorandum of Agreement Exemptions under the Section 44-F of  
15 the Clean Water Act. It's a 1989 memorandum of agreement  
16 between the Army and EPA.

17 [Stoner Exhibit No. 13 is marked for  
18 identification.]

19 Ms. Stoner. I think it would help me to take a look at  
20 it.

21 Mr. Longani. And for the record, the highlights are  
22 not in the original.

23 [Pause.]

24 Mr. Burns. Take a look at, "I. Purpose and Scope." And  
25 it is the second paragraph, and it reads, "The Attorney

1 General of the United States issued an opinion on September  
2 5, 1979, that the EPA Administrator has the ultimate  
3 authority under the CWA to determine the geographic  
4 jurisdiction scope of Section 44 Waters of the United  
5 States, and the application of Section 44-F Exemptions."

6 The MOU further states, "All future programmatic  
7 guidance and interpretations and exemptions shall be  
8 developed by EPA and input from the courts. However, EPA  
9 will be considered the lead agency and will make the final  
10 decision if agencies disagree."

11 Now Ms. Stoner, is there anything improper about the  
12 EPA taking the lead with respect to the Waters of the U.S.  
13 rulemaking in light of this MOA?

14 Ms. Stoner. Well there is -- this is a reference to an  
15 Attorney General's opinion.

16 Mr. Burns. Correct.

17 Mr. Stoner. That determine that EPA had an ultimate  
18 authority on the geographic scope of the Clean Water Act.  
19 And so to the extent that there was disagreement that  
20 couldn't be resolved, that Attorney General's opinion  
21 suggests that the agency can make the final decision.

22 The practice was, though, to actually try to resolve  
23 the issues and elevate those that couldn't be resolved at  
24 the staff level to be resolved at a higher level.

25 So the intent then was actually to work collaboratively

1 on the rule.

2 Mr. Burns. Thank you.

3 BY MR. LONGANI:

4 Q I am going to clean up a couple of questions. I  
5 am going to bounce around, based on what my colleagues have  
6 asked, and then we will be done for the moment, at least.

7 I believe Exhibit 3, you can pull that. My colleagues  
8 introduced that. It's a list of people, I believe, that the  
9 EPA or groups at the EPA was calling during the rollout of  
10 the proposed rule.

11 Ms. Stoner, isn't it fair to say that the EPA, as a  
12 general matter, and the Army, and this joint rulemaking, you  
13 couldn't actually call every single group that would have an  
14 interest in this rule. Isn't that fair to say?

15 A I -- the rule had widespread interest, that's  
16 correct.

17 Q And in picking those groups that are in there,  
18 would you agree that those are a list of some of the groups  
19 that would be interested in the proposed rule, but certainly  
20 not all.

21 A That's correct.

22 Q Do you know how those groups were picked?

23 A I think that there were people who had  
24 participated in discussions with us about the proposed rule.  
25 There may well have been a list -- comparable list -- that

1 the Corps was making calls to, or even that somebody else  
2 was making calls to, like CEQ. I have no idea.

3 [Counsel conferred.]

4 Q Exhibit 2 indicates -- my colleagues also asked  
5 you about the sentence on page 1 in the penultimate  
6 paragraph that talks about 117 million Americans.

7 A Correct.

8 Q And you had said, I believe, that that number came  
9 from an analysis that was done by an individual during the  
10 Bush administration. Is that correct?

11 A Yes, Ben Grumbles, the Assistant Administrator for  
12 Water, I believe, asked to have analysis done to determine  
13 how many Americans receive drinking water that is supported  
14 by intermittent and ephemeral streams. I recall the  
15 information coming out of the EPA when I was at NRDC.

16 Q Do you have any reason to disagree with that  
17 number?

18 A Well I would disagree with it, only in the sense  
19 that I think it has become increasingly dated. There are  
20 probably a lot more Americans because there are a lot more  
21 Americans now than there were then.

22 So if it was from 2006 or 2007, so there probably -- it  
23 understates the number of people.

24 Q So if anything, you believe, at this date, that  
25 number would be an underestimate?

1           A     That is correct, based on population growth.

2           Q     Now as to the economic analysis that was done for  
3 this rule, would you agree that this was a joint product of  
4 the Environmental Protection Agency, as well as, the Corps?

5           A     I believe it was.

6           Mr. Longani. And in fact, I'm going to show you -- I'm  
7 going to mark as Exhibit 14.

8                                 [Stoner Exhibit No. 14 was marked for  
9                                 identification.]

10                                BY MR. LONGANI:

11           Q     Although I'm not going to ask you to turn the  
12 page, I'll show you the title page, here. I'm not going to  
13 go into -- on the front page of that, Ms. Stoner, would you  
14 agree that it lists both the EPA and the Corps as authors?  
15 The Corps is a contributing author and the EPA is a primary  
16 author?

17           A     It does.

18           Q     Is there anything improper about that?

19           A     No, I believe it suggests that the staff who  
20 primarily did the work on the document were employed by  
21 USEPA and that the Corps had an opportunity to review and  
22 comment on it, and -- before it was finalized.

23           Q     Is there anything procedurally improper about  
24 that?

25           A     No, it was a staffing issue as I recall.

1 [Pause.]

2 Q I'm sorry, I know I'm well over my half-hour. I'm  
3 sorry, we're almost done. We're almost, almost done.

4 A It's okay.

5 Q My apologies, I'm almost done. My colleagues also  
6 asked you about an email from Bob Sussman in Exhibit 1. Do  
7 you mind pulling that out for just a second?

8 A Okay.

9 Q And in that email, Mr. Sussman says in the  
10 penultimate sentence, "The delay in completing interagency  
11 review is preventing closure on the strategy for releasing  
12 the guidance."

13 You have already talked about the context of that, Ms.  
14 Stoner, and I have a more general question as it relates to  
15 agencies and their wanting to get their rules done.

16 Is there anything unusual about an agency wanting to  
17 get its rule completed as quickly as possible?

18 A No, and -- no, there's nothing unusual about that.  
19 Usually the agency is anxious to close out the process as  
20 soon as possible.

21 Q You also mentioned in the first hour, that  
22 interagency review of guidances is not required, but the EPA  
23 and Army did it anyway. Why?

24 A Because there was widespread interest in this  
25 rule, or this guidance.

1 Q And is there anything unusual about the fact that  
2 the EPA and the Army were meeting with OMB and CEQ during  
3 this rulemaking process?

4 A No.

5 Q In fact, wouldn't you have expected that to  
6 happen, based on your rulemaking experience and the subject  
7 matter of the Clean Water rule?

8 A Yes.

9 Mr. Longani. Anything else? Anything else from you  
10 guys?

11 [No response.]

12 Mr. Longani. One quick question on the connectivity  
13 report, Ms. Stoner. The EPA Science Report was a peer  
14 review synthesis to publish peer reviewed scientific  
15 literature on connectivity; correct?

16 Ms. Stoner. I believe that is correct.

17 Mr. Longani. So it's not just Corps data that the EPA  
18 used in the connectivity report. Is that correct?

19 Ms. Stoner. That's correct.

20 [Pause.]

21 Mr. Longani. In your rulemaking experience, Ms.  
22 Stoner, is there anything unusual about an agency asking for  
23 expedited review of a rule from OIRA, in other words,  
24 shorter than the 90 days?

25 Ms. Stoner. No. Good when you can get it.

1 [Pause.]

2 Mr. Longani. Good. Thank you, Ms. Stoner.

3 Ms. Stoner. Okay. Thank you.

4 [Off the Record at 2:29 p.m.]

5 Mr. Hambleton. Okay. It's 2:31 p.m., let's go back  
6 on.

7 EXAMINATION [Resumed]

8 Mr. Hambleton. All right. I wanted to ask you about  
9 use of email when you were with the agency. Did you ever  
10 use a personal email account while you were at EPA for  
11 official business?

12 Ms. Stoner. So I didn't have an email until a couple  
13 of months before I left the agency.

14 Mr. Coburn. You mean a personal email address?

15 Mr. Hambleton. Yes, a personal or agency email  
16 address, or other.

17 Ms. Stoner. I'm confused.

18 BY MR. HAMBLETON:

19 Q You said you didn't have an email address until --

20 A -- No, yeah. I didn't have a personal email  
21 address. So all of my email was on the EPA email until just  
22 a couple of months before I left the agency.

23 There may have been some emails in the last couple of  
24 months that were communications from something that I said -  
25 - sent from home to the agency, but I guess that would have

1 been on my EPA email address.

2 So I don't think there's a lot of agency business that  
3 you will find on my personal email, but I don't think I  
4 could tell you today that there was never an email that I  
5 sent in the last couple of months I was in the agency that  
6 reflected agency business.

7 Mr. Hambleton. Okay. Does the Pisces Foundation have  
8 a position on WOTUS?

9 Mr. Coburn. I got to tell you guys that's the one area  
10 that Nancy is not going to answer questions about --  
11 anything after she left the agency.

12 Mr. Hambleton. Well let me ask you this, then. When  
13 did you begin negotiations with the Pisces Foundation to be  
14 in employment there?

15 Ms. Stoner. Approximately June of 2014.

16 Mr. McGrath. Do you know if they had a position on the  
17 Waters of the U.S. rule when you were at the agency?

18 [No response.]

19 Mr. Coburn. He's asking if like, while you were at the  
20 agency you were aware at that time of whether they had a  
21 position on the rule.

22 Ms. Stoner. Well it's a foundation, it doesn't really  
23 have positions.

24 [Pause.]

25 Mr. Hambleton. Prior to coming in for this interview,

1 have you spoken to anyone at EPA, the Executive Office of  
2 the President, or anyone else in government about any other  
3 transcribed interviews that the committee has conducted on  
4 this matter?

5 Ms. Stoner. Yes.

6 Mr. Hambleton. Can you please describe those  
7 conversations?

8 Mr. Coburn. You mean about the substance of other  
9 interviews? Or whether other interviews occurred?

10 Mr. Hambleton. I would say both.

11 Ms. Stoner. So Barry and I met with OGC to ask about  
12 what was likely to be discussed at this transcribed  
13 interview, and what the process was like.

14 Mr. Coburn. But it didn't include the substance of any  
15 other interviews.

16 BY MR. HAMBLETON:

17 Q Okay. What did EPA/OGC advise you?

18 A They didn't really advise me. Barry was there.  
19 They looked at my counsel to advise me they didn't really  
20 advise me.

21 Q Well so what occurred at the meeting then? You  
22 said you met with them to discuss what -- I'm sorry, what  
23 was your answer? To discuss --

24 A What was likely to occur and what the process was  
25 like.

1 Q Okay. What did they tell you?

2 A They told me a lot of the same things that you  
3 told me. That there would be one counsel that would go for  
4 an hour, another counsel would go for another hour, they  
5 talked about that there would be a court reporter, that  
6 there would be an opportunity to look at the transcript,  
7 that it would not be publically available.

8 They indicated that John Gooden had been the other EPA  
9 person who had been here, and they talked about some of the  
10 areas that they anticipated that you would be interested in.

11 Q Who did you meet with at OGC?

12 A Stacy Mitchell. Jonathan Rackoff. And there was  
13 another person named Nicole, whose last name I don't know.

14 Mr. Coburn. Me neither.

15 Ms. Stoner. Avi Garbow came in and said hi to me.

16 Mr. Hambleton. If you remember, was it Nicole  
17 DiStefano?

18 Mr. Coburn. I think you're right.

19 Mr. Hambleton. When did that meeting occur?

20 Ms. Stoner. Tuesday.

21 Mr. Coburn. Two days ago.

22 Ms. Stoner. Tuesday.

23 Mr. Coburn. I shouldn't be testifying. Sorry.

24 Ms. Stoner. It's okay.

25 Mr. McGrath. Did they counsel you -- not counsel,

1 counsel is the wrong word. Were there any further  
2 discussions of any of the content of any of the previous  
3 interviews?

4 Ms. Stoner. No. They did not tell me what any witness  
5 had testified to.

6 Mr. Hambleton. Did you discuss strategy for how to  
7 conduct this interview?

8 Ms. Stoner. Not really.

9 Mr. McGrath. One last side issue again. Did you know  
10 Peter Jutro while you were at the agency?

11 Ms. Stoner. I don't know that name.

12 [Counsel conferred.]

13 Mr. Hambleton. We can go off the record. All right.  
14 We're all set.

15 [Off the Record.]

16 Mr. Longani. Just a quick question that I had  
17 forgotten to ask.

18 Ms. Stoner, Craig Schmauder, on page 111 of the  
19 transcript told the committee, "The Army stands behind the  
20 economic analysis of a document that was prepared on behalf  
21 of the rulemaking effort.

22 I'm not an economist, I do know that our economist  
23 looked at it, I know that EPA's economist looked at it. I  
24 know EPA has -- I think it's the Environmental Economic  
25 Analysis Order or something. They have an independent board

1 that looks at economic analysis.

2 I believe they certified the economic analysis as well  
3 as the document was reviewed at OMB and OIRA, so a lot of  
4 people have looked at the economic analysis and gave their  
5 support for its conclusions."

6 Do you have any reason to disagree with Mr. Schmauder's  
7 statement?

8 Ms. Stoner. I don't.

9 Mr. Longani. And I know, I'm going to take one more  
10 question. And you mentioned to my colleagues that you had  
11 worked on an earlier joint rule involving the Buffer Zone  
12 rule; is that right?

13 Ms. Stoner. Yes.

14 Mr. Longani. Okay. Would you agree that both of these  
15 joint rules, the Clean Water rule, as well as, the Buffer  
16 Zone rule from a process standpoint, were treated the same?

17 Ms. Stoner. Well I think that counsel corrected me  
18 that the Buffer Zone rule was actually Department of the  
19 Interior rule.

20 Mr. Longani. Oh.

21 Ms. Stoner. So I think they are somewhat different in  
22 that regard.

23 Mr. Longani. We're done. Thank you.

24 Mr. Składany. I'll just sort of, wrap up by saying --  
25 reiterating what I said early to Chairman, we appreciate

1 that you came here and answered questions voluntarily, and  
2 just for the record with respect to the scope of the  
3 interview, the committee doesn't limit our questions in any  
4 way, but we do respect your right to answer or not answer.

5 Anything you do or don't want to answer in a voluntary  
6 setting, and so for those questions that you chose not to  
7 answer, we will advise the Chairman and just sort of reserve  
8 our right to ask you those again at some point.

9 Mr. Coburn. We appreciate that, and I should just note  
10 -- and I know you probably already recall this, there's  
11 actually one question she didn't answer which relates to  
12 Pisces.

13 Mr. Składany. That's right. Yes. And I think with  
14 that, the interview is over. So thanks very much.

15 Mr. Coburn. Thank you.

16 [Whereupon, the interview was concluded at 2:40 p.m.]

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CERTIFICATE OF INTERVIEWEE

I have read the foregoing 118 pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

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Nancy Stoner