



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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JUL 17 2015

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-6175

Dear Chairman Inhofe,

Thank you for your letter dated July 16, 2015 requesting a copy of the April 27, 2015 memorandum signed by Major General (MG) John Peabody, Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers (Corps), along with its tabbed enclosures (collectively referred to *Peabody I*). Further, you asked for a copy of the May 15, 2015 memorandum from MG Peabody (referred to as *Peabody II*) which forwards a memorandum from the Corps' Regulatory Program Chief, Ms. Jennifer Moyer (*Moyer* memorandum), as well as a copy of the analysis prepared by Paul Scodari (*Scodari* document), an economist on staff at the Corps' Institute for Water Resources. The *Moyer* memorandum and the *Scodari* document offer comments on the Economic Analysis prepared in support of the final Clean Water Rule that was published in the Federal Register on June 29, 2015.

In order to address your request for expedited handling of these documents, earlier today the Deputy General Counsel of the Army (Installations, Environment and Civil Works) delivered an electronic copy of the requested documents to the Committee's Chief Counsel. We shall now turn our attention to the other documents you requested in your letter.

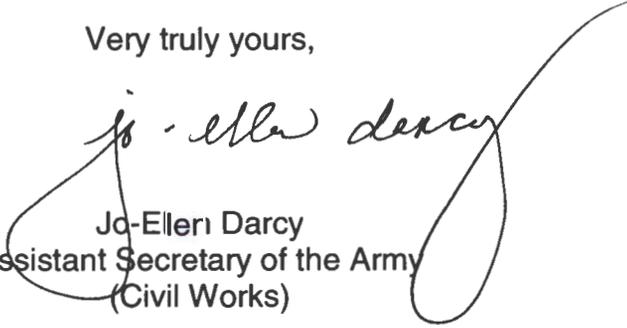
I wish to emphasize several key points related to these documents. First, although *Peabody I* was produced more than three weeks after the Clean Water Act rule was provided to the Office of Management and Budget to initiate the interagency review process, the concerns raised in the memorandum, and its associated enclosures, were thoroughly considered prior to issuance of the draft final rule. Because these materials were considered internal deliberative documents, they were not released outside the Army. However, the issues raised therein were considered in detail and discussed with the Environmental Protection Agency (EPA), our partner in developing the rule, as well as with the larger Federal family during the interagency review process. After analyzing and discussing the issues raised by the Corps, the Army and EPA agreed to make three important changes to the rule, in addition to many other technical edits, for which the Corps was advocating, for example, inclusion of the 100-year flood plain in section (a)(8), modification to the ditch exclusion in section (b)(3)(ii), and inclusion of a flexible grandfathering provision in the preamble. Thus, the Army considered all the input received from the Corps throughout the drafting, vetting, and interagency review

processes. Secondly, I want to make it very clear to the Committee that the *Scodari* document was never provided to me until Tuesday, June 30, 2015, when I asked for a copy. In fact, my staff and I were completely unaware of the existence of this document until it was brought to our attention by Chairman Gibbs, House Committee on Transportation and Infrastructure - Subcommittee on Water Resources and Environment. Presumably, the comments offered by Mr. Scodari were incorporated into the *Moyer* memorandum. I wish to also remind the Committee that *Peabody II* was prepared six weeks after the Clean Water Act rule was provided to the Office of Management and Budget to undertake interagency review. Although received very late in the process, the concerns raised in the *Moyer* memorandum were in fact considered prior to issuance of the draft final rule. Like *Peabody I*, *Peabody II* and the *Moyer* memorandum were considered to be internal and deliberative Army documents. As such, these documents were not released outside the Army. However, I assure you the issues in *Peabody II* and the *Moyer* memorandum were likewise discussed in detail with the EPA. I emphasize that the Army considered all the input received from the Corps throughout the drafting, vetting, and interagency review processes.

Please note that the documents transmitted today to the Committee's Chief Counsel contain sensitive information exempt from the disclosure provisions of the Freedom of Information Act (5 U.S.C. § 552). The Army provides these documents with a full reservation of rights and with the understanding and intent that providing them shall not be deemed a waiver of any applicable privilege. The Army respectfully requests that these documents be shared only within your Committee and then only with those who have an official need for the information; that the documents not be disclosed outside the Committee or to the public; that appropriate steps be taken to safeguard the documents; and that the documents be destroyed after use. Safeguarding these documents is particularly important now that the Army and the EPA are actively involved in litigation associated with publication of the final rule.

Thank you for your continued interest in the Army Civil Works program.

Very truly yours,



Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)