

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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December 1, 2015

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230

Dear Secretary Pritzker:

The Committee on Science, Space, and Technology is continuing its oversight of the National Oceanic and Atmospheric Administration (NOAA).¹ I am in receipt of Secretary Sullivan's November 20 letter in response to my November 13 and 18 letters to you.² Secretary Sullivan's response, detailing the agency's efforts to respond to the Committee's "multiple letters" and lawfully-issued subpoena dated October 13, 2015,³ unfortunately continues NOAA's pattern of failing to act in good faith to cooperate with the Committee's oversight efforts.

The Committee does not dispute that NOAA has provided in-person briefings, publicly-available data related to the Karl et al. study, and has agreed to make several witnesses available for voluntary interviews. However, as has been made clear repeatedly in meetings, telephone calls, and e-mail exchanges with NOAA and Department of Commerce Office of Legislative and Intergovernmental Affairs staff, the Committee's ongoing oversight requires the production of e-mails and other communications sent and received by NOAA officials. As I have noted previously, the communications first requested, then subpoenaed, by the Committee include those sent and received by NOAA political, policy, and scientific staff.

NOAA has steadfastly refused to discuss the issue of communications relating to any NOAA official with the Committee. For example, as memorialized in the Committee's

¹ Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Penny Pritzker, Sec'y, U.S. Dep't of Commerce (Nov. 18, 2015); Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (Nov. 13, 2015); Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Kathryn D. Sullivan, Admin., NOAA (Nov. 4, 2015) [hereinafter Letter, Nov. 4, 2015].

² Letter from Kathryn D. Sullivan, Admin., NOAA, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech (Nov. 20, 2015) [hereinafter Letter, Nov. 20, 2015].

³ H. Comm. on Science, Space, & Tech, Subpoena to Hon. Kathryn D. Sullivan, Admin, NOAA (Oct. 13, 2015).

November 4, 2015, letter to Administrator Sullivan,⁴ during a staff briefing on November 3, 2015, NOAA staff was unable to confirm or provide any assurances that a good faith effort would be made to provide communications related to non-scientists at the agency involved in the decision making process of the data change or communications related to the agency's public statements about the change.⁵ Contrary to Secretary Sullivan's claim that NOAA first learned of the Committee's interest in obtaining communications from non-scientists on November 13,⁶ NOAA has been on notice of the Committee's interest since before the Committee issued a subpoena on October 13.

Secretary Sullivan's November 20 response on your behalf states that "NOAA remains committed to working with the Committee to accommodate its oversight" and that "NOAA asked Committee staff on several occasions to narrow the scope of the requests so NOAA could work effectively to accommodate the Committee's particular oversight needs. To date, Committee staff have declined our requests."⁷ These statements reveal either a fundamental misunderstanding of the process of negotiation or a remarkable mischaracterization of the discussions between the Committee and NOAA. After receiving each of the Committee's numerous requests and finally a subpoena compelling production of the requested communications, it was incumbent upon NOAA to suggest a narrowing of the Committee's request; this could include, for example, a suggestion to limit the range of dates or that communications for some NOAA staff be prioritized and provided to the Committee while discussions about other staff were ongoing. Instead, every request for communications by the Committee, whether through formal letters or discussions between staff, has been met with either a blanket refusal or a refusal accompanied by a suggestion that the Committee consider revising its request, but with no commitment that NOAA would agree to provide communications even if the Committee narrowed its request.⁸

To date, NOAA has not provided any legal argument justifying its refusal to comply with the Committee's lawfully-issued subpoena, and the Committee continues to consider all available means to ensure agency compliance with its Constitutionally-obligated oversight responsibilities. NOAA's refusal to enter good-faith negotiations with the Committee on the subpoenaed communications has severely impacted the Committee's ability to fulfill its duties. In order to move the Committee's work forward and to allow for further discussions on issues related to the subpoenaed communications about which the agency and the Committee disagree, the Committee is willing to accommodate NOAA and prioritize communications sent and received by non-scientific personnel. However, this prioritization does not alleviate NOAA's obligation to respond fully to the Committee's subpoena.

⁴ Letter, Nov. 4, 2015, *supra* note 1.

⁵ *Id.*

⁶ Letter, Nov. 20, 2015, *supra* note 2.

⁷ *Id.*

⁸ Meeting with NOAA Officials & H. Comm. on Science, Space, & Tech. Staff (Nov. 3, 2015).

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Please provide the following documents as soon as possible, but no later than December 15, 2015:


All documents and communications by NOAA officials, with the exception of scientists acting in their official capacity, referring or relating to the Karl study, including but not limited to, any official in the Office of the Administrator, Office of Communications and External Affairs, Office of Legislative and Intergovernmental Affairs, and the Office of the Chief Information Officer from January 1, 2014 to present.

The Committee on Science, Space, and Technology is the principal oversight committee of the National Oceanic and Atmospheric Administration as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,


Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member

The Honorable Kathryn D. Sullivan, Administrator, National Oceanic and Atmospheric Administration