

September 18, 2026

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The Honorable Bruce Westerman
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Westerman:

I am writing on behalf of the Natural Resources Defense Council (“NRDC”) in response to the Committee’s September 4, 2026 letter (“Letter”) to NRDC President and CEO Manish Bapna. The Letter requests documents and information relating to NRDC’s litigation decisions, its associations with other organizations, and its recovery of attorneys’ fees and costs under several federal statutes. NRDC appreciates the opportunity to correct the record about its litigation program and to explain why that work is protected by the First Amendment of the Constitution and well-established common law privileges. Accordingly, the information contained herein is intended to provide context for and otherwise accommodate the Committee’s interest in considering legislative reforms to fee-shifting statutes, while protecting NRDC’s rights and privileges.

NRDC Has a Long Record of Successfully Suing to Enforce the Laws Passed by Congress

NRDC was founded in 1970 by a group of young lawyers as one of the first national environmental organizations built specifically around the use of law to protect the environment. For more than 55 years, NRDC has worked to safeguard the nation’s air, water, wildlife, and public lands, and to secure the rights of all Americans to a healthy environment.

Today, NRDC’s work is sustained by more than three million members and supporters across the country and carried out by a staff of roughly 700 scientists, lawyers, and policy experts. NRDC’s commitment to transparency and the effective use of the support it receives from its members and donors has been recognized with a four-star rating from Charity Navigator and an A- grade from CharityWatch.

NRDC’s litigation program has for more than five decades been one of the most effective vehicles for enforcing the environmental laws that Congress enacted. NRDC litigates without

regard to which political party controls the White House, suing to enforce federal law whenever it believes an agency has violated it, whether that agency serves a Republican or a Democratic administration. Moreover, NRDC routinely prevails in the litigation it initiates. In fact, NRDC prevailed in nearly 90 percent of the cases that were resolved during the first Trump Administration.

These lawsuits have produced tangible, lasting benefits for the American public. NRDC's litigation, for example, was instrumental in securing a \$97 million settlement requiring the City of Flint, Michigan, to replace its lead water service lines; in requiring federal agencies to bring decades-old nuclear weapons facilities, including the Hanford Site, into compliance with federal environmental law; and in obtaining Clean Water Act enforcement against Los Angeles County for chronic water pollution in the Los Angeles and San Gabriel Rivers (a judgment the Supreme Court left undisturbed when it denied the County's petition for review).

NRDC's Fee Recoveries are Limited and Carefully Calculated in Accordance with the Relevant Statutes

Contrary to the Committee's assertion that NRDC has built a "powerful and profitable litigation machine" funded through "the exploitation of statutory fee-shifting provisions,"¹ court-awarded fees represent only a minimal fraction of NRDC's operating budget. With respect to cases involving the statutes or agencies identified by the Committee, over NRDC's last five fiscal years, NRDC and the counsel representing it in litigation received a total of \$1.24 million in fee awards from the United States, an amount equal to just 0.112 percent of NRDC's operating expenses over that same five-year period. To be sure, the NRDC does not "function as [a] law firm[] funded by taxpayer dollars."²

Those limited amounts are derived through a rigorous process involving all parties, including the government. Under the statutes identified in the Committee's letter, a party may recover fees only where a court determines that the government acted unlawfully. *See* 28 U.S.C. § 2412(d)(1)(A); 5 U.S.C. § 504(a)(1); 16 U.S.C. § 1540(g)(4); 30 U.S.C. § 1275(e). Any fee request must be supported by an itemized statement of the time expended and the rates claimed. *See* 28 U.S.C. § 2412(d)(1)(B). In those cases where there is a request, the amount requested is subjected to an adversarial process that includes review by the Department of Justice, which can contest it, and by the presiding court, which can reduce or reject the request outright.

The Letter also identifies eight environmental protection federal statutes that contain fee-shifting provisions. Of those eight, however, NRDC is not eligible to recover attorneys' fees under six: NEPA, FLPMA, the Mineral Leasing Act, the National Forest Management Act, MMPA, and

¹ Letter at 1.

² Letter at 2.

MSA. NRDC is ineligible for fee awards under those statutes because they contain no independent fee-shifting provisions and NRDC does not meet EAJA's eligibility requirements, including a cap on the size of the requesting organization that NRDC's staff exceeds. *See* 28 U.S.C. § 2412(d)(2)(B); 5 U.S.C. § 504(b)(1)(B). NRDC may seek fees only under the ESA and SMCRA, each of which contains its own fee-shifting provision independent of EAJA's eligibility caps. *See* 16 U.S.C. § 1540(g)(4); 30 U.S.C. § 1275(e).

Moreover, NRDC's limited fee awards (again, \$1.24 million over five years in cases involving statutes or agencies named by the Committee in the Letter) arise only from cases in which a court has found that the federal government violated the law. *See Ruckelshaus v. Sierra Club*, 463 U.S. 680, 694 (1983) (“[A]bsent some degree of success on the merits[,] . . . it is not ‘appropriate’ for a federal court to award attorney’s fees . . .”). In enacting the fee-shifting statutes at issue, Congress recognized that citizen litigants like NRDC perform a public service by holding federal agencies to the law that Congress itself wrote, and it built fee-shifting into these statutes for that very reason. *See Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 560 (1986) (Congress “recognize[d] that in bringing legitimate actions . . . citizens would be performing a public service” warranting an award of litigation costs); *Animal Legal Def. Fund v. Special Memories Zoo*, 42 F.4th 700, 704 (7th Cir. 2022) (fee-shifting “ensures the vindication of important rights . . . by making attorney’s fees available under a private attorney general theory”) (citation omitted). Nor did Congress intend that attorneys employed by nonprofit organizations like NRDC be compensated at a discount simply because they work for a nonprofit. *See Blum v. Stenson*, 465 U.S. 886, 894 (1984). Viewed against the backdrop of the courts’ clear guidance regarding the appropriateness of fee shifting in cases where the government has been found to have violated the law, the Committee’s characterization of NRDC’s fee recoveries as a scheme to “siphon[] taxpayer dollars” is difficult to reconcile with Congress’s own stated purpose in enacting these statutes.³

Many of the Committee’s Requests Exceed the Scope of Congress’s Oversight Authority

NRDC respects the important role Congress plays in overseeing the administration of federal law. That authority, however, is not unlimited. A congressional request for information is valid only if it is “related to, and in furtherance of, a legitimate task of the Congress” and concerns “a subject on which ‘legislation could be had.’” *Watkins v. United States*, 354 U.S. 178, 187, 206 (1957); *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 n.15 (1975) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927)). Several of the Committee’s requests for documents and information fall outside the scope of that authority.

First, many of the requests cover activity protected by the First Amendment. NRDC’s decisions about whether, when, and where to sue, how to establish standing, and with which organizations

³ Letter at 4.

to associate in litigation are protected exercises of the freedoms of speech, association, and petition. *See NAACP v. Button*, 371 U.S. 415, 429–30 (1963) (litigation is, at times, “the sole practicable avenue” for a group to petition the government for redress). The Letter requests, for example, information about NRDC’s process for “searching for and selecting individual members who reasonably have standing to sue in their own right,” which calls for information about NRDC’s relationship with its own membership. Compelled disclosure of that kind of associational activity can itself violate the First Amendment. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). Government efforts to compel disclosure of information that burdens First Amendment activity are permissible only if they satisfy “exacting scrutiny,” meaning “a substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010)). In addition, the requirement must be “narrowly tailored to the interest it promotes.” *Id.* at 610.

The Committee does not allege, and could not allege, that NRDC has violated any law to establish a sufficiently compelling governmental interest; to the contrary, the Committee identifies its interest as informing potential legislative reform of fee-shifting statutes. But many of the requests in the letter bear no substantial relation to that interest, such as those seeking NRDC’s decision-making process for suing under eight different federal statutes,⁴ and NRDC’s communications with other nonprofit organizations regarding case coordination.⁵ In fact, much of the information relevant to the Committee’s stated legislative purpose is available from publicly available sources, including the Administrative Conference of the United States (ACUS) online database of attorney’s fee awards made under EAJA.

Second, many of the Committee’s requests seek information protected by the attorney-client privilege and the attorney work-product doctrine. Recipients of congressional information requests “have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications.” *Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020). The D.C. Circuit recently reaffirmed this principle, explaining that recipients of congressional process “retain common law and constitutional privileges” against governmental demands for disclosure. *United States v. Navarro*, No. 24-3006, slip op. at 4 (D.C. Cir. July 21, 2026) (quoting *Mazars*, 591 U.S. at 863); *see also Bragg v. Jordan*, 669 F. Supp. 3d 257, 274 (S.D.N.Y. 2023) (recognizing the same principle). Requests seeking NRDC’s internal deliberations about whether and how to litigate (such as the requests for NRDC’s litigation “decision-making process,” and for information about NRDC’s decisions to intervene in litigation brought by others) call for precisely the kind of “mental impressions, conclusions, opinions, or legal theories” that the work-product doctrine protects. Fed. R. Civ. P. 26(b)(3)(B). Furthermore, the request for information about how NRDC “negotiat[es] or settl[es] requests for

⁴ Letter, Request 1.

⁵ Letter, Request 5.

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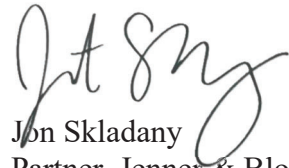
attorney's fees," among other billing-related topics, seeks confidential communications between NRDC and its attorneys and clients of precisely the kind the attorney-client privilege exists to protect. *See Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

* * *

Given that (1) the identified fee awards make up roughly one-tenth of one percent of NRDC's operating budget, (2) NRDC cannot recover fees at all under most of the statutes the Committee identifies, and (3) any fee award NRDC does receive necessarily reflects a judicial finding that the federal government broke the law, we are hopeful the Committee is satisfied NRDC is operating in compliance with Congress's legislative intent for statutes with fee-shifting provisions. NRDC respects the Committee's oversight function and, to the extent that the Committee has need for additional information, will attempt to accommodate any new requests within the well-established limitations the courts have placed on Congress's investigative authority.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Skladany", written over the printed name.

Jon Skladany
Partner, Jenner & Block
Counsel to NRDC

cc: The Honorable Jared Huffman, Ranking Member
Committee on Natural Resources