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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

April 5, 2013

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Mary Kendall
Deputy Inspector General
U.S. Department of the Interior
1849 C Street, N.W. – Mail Stop 4428
Washington, D.C. 20240

Dear Ms. Kendall:

On February 7, 2013, the Office of Inspector General (“IG”) issued a final report of its investigation into a scientific integrity complaint associated with the Department of the Interior’s (“Department”) September 2011 Draft Environmental Impact Statement (“DEIS”) for the Drakes Bay Oyster Company Special Use Permit.

For several years, serious questions have been raised about the National Park Service’s (“NPS”) use of science to estimate the farm’s impacts on harbor seals and more recently on the Point Reyes National Seashore’s soundscape in order to justify closure of the oyster farm, which has provided a sustainable source of shellfish in northern California and employed more than 30 workers.

The scientific integrity complaint¹ made six allegations that the Department and the NPS did not follow applicable policies, knowingly made false representations about and concealed acoustic data, and concealed information from the public and the peer reviewers to overstate the impacts of the oyster farm in developing the DEIS. According to the IG’s report, the investigation “found no evidence, documents, DEIS revisions, or witnesses that supported the complainant’s allegations.”

As you know, the Committee has identified serious concerns with how the IG has been managed under your leadership and that of IG Chief of Staff Stephen Hardgrove, including instances where a critical report of the Department’s renewable energy programs was first

¹ The April 24, 2012 complaint from Dr. Corey Goodman, an elected member of the National Academy of Sciences, was addressed to Ms. Kendall, as well as the Dr. Ralph Morganweck, the Scientific Integrity Officer for the Department, and Dr. Gary Machlis, the Scientific Integrity Officer for the NPS. Dr. Morganweck and Dr. Machlis recused themselves from hearing the complaint, leaving the IG as the office responsible for investigating and responding to Mr. Goodman’s allegations.

softened and then not finalized, and where potential ethics violations and other scientific integrity complaints were not fully investigated.

An oyster farm had operated in Drakes Estero for decades before the Point Reyes National Seashore was established in 1962. A previous owner of the farm sold land to the NPS in 1972 but retained permission to continue operating the oyster farm until 2012. In 1976, a portion of the National Seashore was designated wilderness, while the area housing the oyster farm was designated as “potential wilderness.” The NPS considers the oyster farm a nonconforming use that is incompatible for a wilderness area.

In 2009, Congress passed legislation² specifically authorizing the Secretary of the Interior to approve a 10-year extension of the farm’s authorization and special use permit, notwithstanding any other provision of law. The farm’s current owners in 2010 sought a new permit that would allow them to continue operating the farm for another 10 years. Even though the Department was not bound to follow the National Environmental Policy Act (“NEPA”), or any other law, in considering whether to grant the oyster farm’s extension, the Department nonetheless undertook a costly, multi-year study under NEPA to determine the farm’s environmental impacts.

The results of that effort have been controversial. For example, the DEIS estimated the farm’s impact by using sound measurements for a jet ski from New Jersey and a cement mixer and failed to explain their use as substitutes for the farm’s actual boats and equipment. The NPS issued its Final Environmental Impact Statement in November 2012, reiterating the oyster farm had a major impact on the National Seashore’s soundscape

In order to better understand the IG’s investigation and ultimate dismissal of these scientific integrity allegations, the Committee’s majority oversight staff first made a written request for a briefing to your staff on February 27, 2013. Given the passage of time and delays in scheduling the briefing, it is requested that the IG provide complete and unredacted copies of the following documents no later than April 26, 2013:

- 1) Any non-public version of the final report of investigation into the scientific integrity complaint, including all attachments thereto;
- 2) All drafts of the report of investigation, including any versions with redline/strikeout edits or handwritten edits;
- 3) The case file for this investigation, including all notes, transcripts, and/or recordings of any interviews with any individuals in connection with this investigation;
- 4) All emails or other documents that were created, sent, or received by Mary Kendall, Stephen Hardgrove, Kris Kolesnik, Bruce Delaplaine, John Dupuy, Rob Knox, Scott

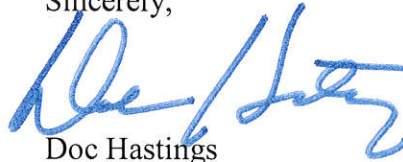
² Public Law 111-98, section 124 of the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010.

Culver, David Brown, Vincent Haecker, and Trey DeLaPena concerning the IG's investigation into the scientific integrity allegations about DEIS; and

- 5) All emails or other documents concerning the decisions of Dr. Morganweck and Dr. Machlis to recuse themselves and for the IG to take the lead in investigating this scientific integrity complaint.

Enclosed with this letter are instructions and definitions for responding to this request. Please have your staff contact Byron Brown in the Office of Oversight and Investigations at 225-2761 with any questions.

Sincerely,



Doc Hastings
Chairman

Enclosure

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), instant message, notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.
4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.
3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.
4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.
6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.
7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.
9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or

is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515