



JUNE 23, 2016

OVERSIGHT HEARING ON THE ADMINISTRATION'S RESPONSE TO FINDINGS OF UNETHICAL AND CRIMINAL CONDUCT AT THE DEPARTMENT OF THE INTERIOR

UNITED STATES HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

ONE HUNDRED FOURTEENTH CONGRESS, SECOND SESSION

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Steve Guertin

Deputy Director of Policy, U.S. Fish and Wildlife Service, U.S. Department of the Interior

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Mary Kendall

Deputy Inspector General, Office of the Inspector General, U.S. Department of the Interior

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Loretta Lynch

U.S. Attorney General, U.S. Department of Justice

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Subcommittee on Oversight and Investigations

Louie Gohmert, Chairman

Hearing Memorandum

June 21, 2016

To: All, Subcommittee on Oversight and Investigations Members

From: Majority Committee Staff, Subcommittee on Oversight & Investigations,
(x5-7107)

Hearing: Oversight hearing titled “*The Administration’s Response to Findings of Unethical and Criminal Conduct at the Department of the Interior*”

The House Committee on Natural Resources, Subcommittee on Oversight and Investigations will hold an oversight hearing entitled, “*The Administration’s Response to Findings of Unethical and Criminal Conduct at the Department of the Interior*” on **Thursday, June 23rd at 10:30 a.m. in Room 1334 of the Longworth House Office Building.**

Policy Overview:

- The U.S. Department of the Interior’s Office of Inspector General (OIG) has recently released numerous reports detailing violations of ethics rules and federal law, including instances of potential criminal activity, by employees of the Department of the Interior (DOI). The failure of the Department to adequately hold employees accountable encourages bad behavior.
- OIG refers cases involving criminal violations to the U.S. Department of Justice (DOJ) for prosecution. In some cases DOJ even participates in OIG’s investigative efforts, and its involvement can impact the pace of the investigation and limit the information that OIG can provide in its reports. Between October 2015 and March 2016, DOJ declined to prosecute 17 of 29 criminal cases that had been referred by OIG, even though the OIG determined criminal conduct was present in the cases.¹
- This hearing will examine how DOI holds its employees accountable, why so many serious ethics violations have recently come to light, the relationship between DOJ and OIG, and how DOJ handles OIG referrals.

Invited Witnesses:

Mr. Steve Guertin
Deputy Director of Policy
U.S. Fish and Wildlife Service
U.S. Department of the Interior
Washington, D.C.

¹ U.S. Dep’t of Interior Office of Inspector General, Semiannual Report to Congress for the Period ending March 31, 2016 (2016).

Ms. Mary Kendall
Deputy Inspector General
Office of the Inspector General
U.S. Department of the Interior
Washington, D.C.

The Honorable Loretta Lynch (or her designee)
U.S. Attorney General
U.S. Department of Justice
Washington, D.C.

Background:

The DOI Office of Inspector General has released numerous reports in which it found instances of unethical and illegal conduct on the part of DOI employees.

Recent Committee Activity

On May 24, 2016 the Subcommittee on Oversight and Investigations held an oversight hearing which examined OIG findings that Jonathan Jarvis, Director of the National Park Service (NPS), had written and published a book in direct violation of DOI ethics standards. These violations included use of his position to obtain the book deal, use of the NPS official logo, and marketing the book in NPS stores.² Director Jarvis admitted that he had not sought guidance from the ethics office because it would have been a time consuming process. He also stated that he was concerned that ethics would ultimately not allow him to publish the book if he sought guidance. He admitted to OIG that if given the opportunity he would not have changed his behavior. Director Jarvis lied to Secretary Jewell and attempted to mislead OIG investigators regarding the matter. Though Director Jarvis issued a public apology for his behavior on May 27, 2016, he remains Director of the NPS.³

At the May 24th hearing, the Committee also examined OIG findings that the Chief Ranger of Yellowstone National Park, Timothy Reid, has not lived in his Park Service apartment on Yellowstone property since he was appointed Chief Ranger in 2009.⁴ Chief Rangers are required to live on-property. Instead, Mr. Reid inappropriately allowed guests to use the apartment and his wife offered use of the apartment in situations involving the family bed and breakfast operation. In May of 2015 he was promoted to the position of Superintendent of Devils Tower National Monument, which receives millions in federal taxpayer dollars each year.

The hearing also addressed OIG findings that the BIA's Director of Education improperly used his position to hire his girlfriend and a relative.⁵ Dr. Roessel was responsible for educating approximately 47,000 Native American students nation-wide. According to information

² U.S. Dep't of Interior Office of Inspector General, Investigative Report of Jonathan Jarvis (2016).

³ Email from Jonathan Jarvis, Director, National Park Service, to All Employees, National Park Service (May 27, 2016) (available at http://www.eenews.net/assets/2016/06/02/document_gw_04.pdf)

⁴ U.S. Dep't of Interior Office of Inspector General, Investigative Report of Timothy Reid, Chief Ranger, Yellowstone National Park (2016).

⁵ U.S. Dep't of Interior Office of Inspector General, Investigation of Improper Hiring at the Bureau of Indian Education (2016).

provided to the Committee, he has been “detailed out” of his position but is still employed with full pay by BIA.

Further Concerning OIG Releases/Findings

- OIG found that Stephen Barton, a U.S. Fish and Wildlife Service employee, failed to disclose that he was employed with pay as treasurer of the Western Association of Fish and Wildlife Agencies (WAFWA) for a period of ten years, while he was concurrently employed as Chief of Administration and Information Management at FWS. This employment constituted a direct conflict of interest. The OIG further found that the government had paid for over 100 flights for Mr. Barton to travel to his home in Idaho in the period of 4 years at a cost of approximately \$96,000, even though he was officially stationed in Washington, D.C. Despite these findings, DOJ declined to prosecute this case.⁶
- OIG found that former BLM Director Robert Abbey was personally and substantially involved in the presale process for a parcel of 480 acres of BLM land near Henderson, Nevada to developer Christopher Milam. Abbey stood to benefit personally from the sale because he and former BLM employee Mike Ford had arranged for Abbey to resume his role in their private consulting firm once he left the employment of BLM. Their consulting firm represented Mr. Milam and it was to receive \$528,000 if the sale was completed. In addition, the OIG found that regulations against preferential treatment and improper use of non-public information regarding the sale had been violated. While DOJ had been involved in the investigation, two U.S. Attorney districts ultimately declined to prosecute this case.⁷
- OIG found that the operator of a mass spectrometer device at the U.S. Geological Survey (USGS) Energy Resources Programs Energy Geochemistry Laboratory in Lakewood, Colorado manipulated scientific results and data between 2008 and 2014. Committee staff later learned from the OIG that the individual was the second employee to do so, and that data manipulation in the lab began in the late 1990’s. Test results from the lab are used in the Energy Resource Program’s coal and water quality assessments. The OIG noted in its report transmittal letter that the full extent of the impacts of this manipulated data are not yet known, but that they will be serious and far ranging.⁸ According to the OIG audit, projects potentially affected by the falsified data between FY08 and FY16 had received \$108 million in funding. USGS permanently closed the lab in February 2016 and the scientist in question resigned in the course of the investigation.
- OIG found that Samuel Whittington, the Director of the National Park Service Denver Service Center, improperly directed that a contract for a senior construction management position be awarded to a construction company that was known to have a prior relationship with Mr. Whittington. Employees at the service center admitted to tampering with a file in the course of the OIG investigation and OIG also reported that Mr.

⁶ U.S. Dep’t of Interior Office of Inspector General, Report of Investigation U.S. Fish and Wildlife Service Official Failed to Disclose Outside Employment and Conflict of Interest (2016).

⁷ U.S. Dep’t of Interior Office of Inspector General, Investigative Report of BLM Land Sale, Henderson, NV (2016).

⁸ U.S. Dep’t of Interior Office of Inspector General, Scientific Integrity Incident at USGS Energy Geochemistry Laboratory (2016).

Whittington and another employee were not truthful with investigators at the onset of the investigation.⁹ DOJ declined to prosecute this case.

- OIG found evidence of a long-term pattern of sexual harassment, with 13 complainants in a letter to Secretary Jewell and 22 additional individuals who told the OIG that they had experienced or witnessed harassment and other forms of misconduct, at the Grand Canyon River District. Superintendent David Uberuaga was aware of the sexual harassment and failed to follow DOI procedures regarding management of such incidents. Prior to his appointment as Superintendent of the Grand Canyon, Mr. Uberuaga had already been the subject of an OIG investigation regarding the illegal sale of his property while he was stationed at Mount Rainier National Park.¹⁰

According to press accounts, Director Jarvis offered Mr. Uberuaga a position in Washington D.C. following the release of the Grand Canyon River District OIG report. Mr. Uberuaga instead chose to retire, effective June 1st. DOJ declined to prosecute.¹¹

- OIG found that Edwin Correa, manager of the Canaveral National Seashore, engaged in a pattern of sexual harassment of three employees over a period of five years. During the investigation Mr. Correa refused to take responsibility for his actions and offered misleading statements to investigators. Mr. Correa has a history of concerning behavior unrelated to the sexual harassment, including an incident in which he publicly criticized a contracting violations whistleblower on social media in 2015.¹² Mr. Correa is currently under criminal investigation by local law enforcement.

Relationship between DOJ and OIG

OIG refers cases involving criminal violations to DOJ for prosecution. U.S. Attorneys have prosecutorial discretion for their districts and may decline to prosecute OIG referrals without public explanation for the declination.

DOJ also participates in some OIG investigations. For example, it participated in the OIG investigation of the Abbey BLM land sale. DOJ involvement in OIG investigations can affect the nature and pace of the investigations, and may limit the evidence that OIG can discuss in its reports to the Department. For example, if DOJ seeks to use a grand jury the evidence cannot be obtained by normal OIG processes, and therefore some information is privileged and OIG is limited in what it can present to the Department. If OIG cannot present all of its information to the Department, full accountability for the illegal activity also may be limited.

DOJ can, and does, decline to prosecute cases, even when it has been involved in the investigation and even when its involvement limits the ability of OIG to present information to

⁹ U.S. Dep't of Interior Office of Inspector General, Report of Investigation of Alleged Contract Steering by the National Park Service's Denver Service Center (2016).

¹⁰ See, Ron Judd, *Mount Rainier Park Ex-Official Scrutinized on Land Deal*, THE SEATTLE TIMES, Oct. 1, 2011 (available at <http://www.seattletimes.com/seattle-news/mount-rainier-park-ex-official-scrutinized-on-land-deal>).

¹¹ U.S. Dep't of Interior Office of Inspector General, Investigative Report of Misconduct at the Grand Canyon River District (2016)

¹² U.S. Dep't of Interior Office of Inspector General, Investigative Report of Sexual Misconduct by Chief Ranger at Canaveral National Seashore (2016), see also, Emily Yehle, *Chief Ranger Trolls – and Gets Caught*, E&E PUBLISHING LLC, Jan. 28, 2016 (available at <http://www.eenews.net/stories/1060031345>).

the Department. For example, though it had participated in the Abbey investigation, DOJ declined to prosecute.

Though DOJ is not at liberty to discuss specific details of its investigations, or reasoning behind its decisions to decline to prosecute specific cases, it can give a broad overview of its relationship with OIG, the investigatory process, information made public within OIG reports, and how and why cases generally may be accepted or declined for prosecution.

June 14, 2016

☆☆☆ Hearing Notice ☆☆☆

MEMORANDUM

To: Members, Subcommittee on Oversight and Investigations
From: The Honorable Louie Gohmert, Chairman
Subject: Oversight Hearing – June 23, 2016

On **Thursday, June 23, 2016, at 10:00 a.m. in Room 1324 Longworth House Office Building**, the Subcommittee on Oversight and Investigations will hold an oversight hearing titled *“The Administration’s Response to Findings of Unethical and Criminal Conduct at the Department of the Interior.”*

Witnesses are by invitation only.

If you need further information, please contact Wesley Gwinn, Clerk, Subcommittee on Oversight and Investigations at (202) 225-7107.

The use of cellular telephones is prohibited on the Committee dais or in the Committee hearing rooms during the meeting of the Committee pursuant to Rule 3(m) of the Committee Rules. Accommodations for individuals with disabilities, including assistive listening systems, interpreters, and materials in alternate formats, may be arranged by contacting the Committee in advance of the scheduled event (4 business days notice is requested) at voice (202) 225-2761; or 1324 Longworth House Office Building (HOB), Washington, D.C. 20515-6201.

**TESTIMONY OF STEPHEN GUERTIN, DEPUTY DIRECTOR FOR POLICY,
U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR,
BEFORE THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL
RESOURCES, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
REGARDING “THE ADMINISTRATION’S RESPONSE TO THE RECENT
INSPECTOR GENERAL REPORT”**

June 23, 2016

Chairman Gohmert, Ranking Member Dingell, and Members of the Subcommittee, thank you for the opportunity to appear before you today to testify on the Inspector General’s report on the actions of a former employee of the U.S. Fish and Wildlife Service (Service). My name is Stephen Guertin. I am the Deputy Director for Policy for the Service.

The Service recognizes and greatly values the important work that the Office of the Inspector General (OIG) performs to ensure that all individuals throughout the Department of the Interior are aware of, and adhering to, the laws, rules and regulations governing the work of federal employees. The OIG’s work helps maintain the professional integrity and ethical foundation that underpins our public service. The OIG provides valuable assistance to our bureau as we continuously work on improving management operations.

The OIG Report of Investigation titled: WAFWA Employment of USFWS Chief (Case No. OI-VA-15-0379-I) (June 7, 2016) concerns former Service employee Stephen M. Barton, who was Chief for Administration and Information Management in the Wildlife and Sport Fish Restoration (WSFR) program. The Service took prompt and appropriate action in response to this report and Mr. Barton is no longer employed with the Service. According to the OIG report, during part of that time, Mr. Barton also served as treasurer for the Western Association of Fish and Wildlife Agencies (WAFWA). His position at WAFWA spanned sometime in 2004 through early 2014.

The findings outlined in the OIG report are deeply troubling, and the Service took immediate action to address the specific situation and is working to ensure it will not be replicated in the future. The evidence presented in the OIG report suggests that Mr. Barton systematically and intentionally lied on his financial disclosure reports and ethics forms; that he deceived his supervisor; that he failed to disclose income he received from WAFWA while he was also working as a federal employee; and that he concealed the extent of his involvement with WAFWA. His nondisclosure was highlighted by his submission of a signed 2010 “Request for Ethics Approval to Engage in Outside Work” form, on which he certified that he received no salary or compensation from WAFWA and that his work for WAFWA would be limited to approximately 10 hours per week. In addition, the OIG report provides evidence that Mr. Barton received nearly \$100,000 in travel reimbursements over a period of five years for questionable travel. It appears that he manipulated the Service’s systems and personnel to engineer this travel for personal reasons.

Given the gravity of the issues raised in the OIG report, the Service acted quickly to appropriately address problems identified in the report. Upon receipt of the OIG report, Mr.

Barton was immediately moved out of his position and barred access to all travel and financial systems. The Service Director asked Mr. Barton's supervisor to step aside and move to a new position and the Service's Chief Financial Officer was asked to step in as the Acting Assistant Director for WSFR. As noted in the OIG's report, the U.S. Attorney's Offices for the Eastern District of Virginia and the District of Idaho declined the case for prosecution.

At present, the Service is undertaking a separate, comprehensive review to ensure that internal controls related to Mr. Barton's actions – controls that may apply to other Service employees – are sufficient to detect and avoid similar occurrences from taking place in the future. The Service's corrective actions will include increased oversight related to outside employment, travel management, use of government property, and time and attendance. The Service has issued a reminder to qualifying employees that all external income needs to be reported on the annual financial disclosure form, and we are adding an additional level of review for this information and developing a verification process. In addition, the Service is issuing guidance to employees regarding what they can and cannot do when they have relationships with outside organizations and what may create a conflict of interest. We will be issuing a reminder to employees regarding prohibitions of the use of Federal property or information systems to conduct outside business. The Service is developing additional processes for oversight of travel, including a certification and audit process.

We are also using this incident as an opportunity to underscore training and ethical responsibilities required by all Service employees.

The vast majority of the Service's over 9,000 employees are dedicated, hard-working, and ethical; have great professional integrity; and take the mission of the Service and their individual responsibilities very seriously. When we become aware of unethical behavior like that identified in this report, we take appropriate and immediate action.

The Service appreciates the OIG's thorough work on this investigation. We also appreciate the Subcommittee holding this hearing to examine this issue. Thank you and I am happy to answer any questions you might have.

COMMITTEE ON NATURAL RESOURCES
114th Congress Disclosure Form
As required by and provided for in House Rule XI, clause 2(g)(5)

June 23, 2016

*“The Administration’s Response to Findings of Unethical and Criminal
Conduct at the Department of the Interior”*

For Individuals:

Name:
Address:
Email Address:
Phone Number:

* * * * *

For Witnesses Representing Organizations:

Name: **Stephen Guertin, Deputy Director for Policy**
Name of Organization you are Representing at the Hearing: **U.S. Fish and Wildlife Service**
Business Address: [REDACTED]
Business Email Address: [REDACTED]
Business Phone Number: [REDACTED]

* * * * *

For Nongovernment Witnesses ONLY:

1. Please attach/include current curriculum vitae or resume.

2. Please list any federal grants or contracts (including subgrants or subcontracts) related to the subject matter of the hearing that were received in the current year and previous two calendar years by you or the organization(s) you represent at this hearing, including the source and amount of each grant or contract.

3. Please list any contracts or payments originating with a foreign government related to the subject matter of the hearing that were received in the current year and previous two calendar years by you or the organization(s) you represent at this hearing, including the amount and country of origin of each contract or payment.

TESTIMONY OF MARY L. KENDALL
DEPUTY INSPECTOR GENERAL
FOR THE U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HOUSE COMMITTEE ON NATURAL RESOURCES
JUNE 23, 2016

Mr. Chairman, Ranking Member, and members of the subcommittee, thank you for the opportunity to testify today regarding the work of the Office of Inspector General (OIG). This hearing, along with the previous hearing before this subcommittee and another recent hearing held by the House Committee on Oversight and Government Reform, helps to highlight the importance of bringing into the public view the role of the OIG as an independent, objective body to investigate matters that ultimately violate public trust. I must emphasize the dedication and hard work of the OIG staff, and give credit to those who produce the results that are the subject of today's hearing.

These recent hearings have also reinforced our focus on analyzing patterns of misconduct, examples of retaliation or intimidation, and systemic failures in management and internal oversight of critical processes within the Department, such as human resources and contract and grant management.

With fewer than 80 investigators, we work with constrained resources to address the ever-increasing complaints and allegations we receive throughout the year from multiple sources. We do so, in part, by capitalizing on a culture at Interior that, for the most part, is populated by individuals who are committed to the mission and doing the right thing. In fact, they are quick to report wrongdoing to the OIG. Just short of 50 percent of our complaints are generated by DOI employees and management. Another 15 percent of our complaints come from anonymous sources, many of which include information known only to DOI employees, so the total percentage is likely higher.

With limited time and resources, our tendency has been to move from case to case without considering cross-cutting impacts or patterns that our investigations uncover. Recently, however, we have begun to look for investigative trends that may illuminate more systemic issues within the Department and its bureaus.

The OIG has established a reputation for fair and thorough investigative and audit work. We are routinely called upon by the Department to conduct independent reviews of suspicious activity or allegations of misconduct. Several of the recent cases giving rise to congressional and media attention were generated by information reported to us by senior Departmental officials. As our reports reflect, however, the source of allegations does not influence the way in which we conduct our work, or report our investigative or audit findings.

While we produce a significant volume of investigative and audit work, in light of our workforce size, we are not always able to transmit and make public our work products as quickly as I would like. We have implemented several internal processes to improve our timeliness without compromising the quality of our work and work products. As you know, we have also implemented a policy of making public essentially all of our investigative reports whether allegations are substantiated or not, as well as some additional audit reports that had not been

published previously. This effort at transparency—something that is unparalleled in the OIG community—has its own challenges. In preparing public versions of these investigative and audit results, we must address grand jury secrecy rules, privacy issues, confidential business and proprietary information protections, and protection of confidential sources. This effort can be quite time consuming, but I believe that the benefit of the resulting transparency is well worth the effort.

As I explained in my testimony for the May 24, 2016 hearing before this subcommittee, we have recently streamlined our process for publishing investigative reports, reducing the time we provide to the Department for review and action from 90 to 30 days, before we provide investigative reports to Congress and publish those reports or summaries on our website. This change provides all of our stakeholders with clear expectations about the public availability of our reports. Since the improved publishing process was implemented, only one report has been delayed to allow the Department of Justice additional time for prosecutorial consideration.

Much of our investigative work includes working with Assistant United States Attorneys and other officials from the Department of Justice (DOJ). We have strong working relationships with many U.S. Attorney's offices, which have resulted in the prosecution of cases throughout the country. An example of this effective working relationship with DOJ is our considerable involvement in the *Deepwater Horizon* task forces—both criminal and civil—which were led by DOJ and resulted in record-setting fines and penalties. We also had great success in the *Guardians* task force, which was led by the U.S. Attorney's Office for the District of Montana, addressing public corruption involving tribal leaders. This model has become a standard for task forces in Indian Country.

We consult with DOJ on all allegations that involve potential criminal violations. A considerable number of these cases do not get prosecuted for any number of appropriate reasons. Other times, a matter may be accepted for consideration for prosecution, but gets delayed due to higher priority cases or other resource limitations. The process of prosecutorial consideration is very deliberate, very detailed, and, at times, completely out of our hands.

OIGs face significant hurdles to get their cases prosecuted. In certain areas of the country, we are presenting white collar crimes that simply do not meet the guidelines of the particular U.S. Attorney's office. We also compete against more notorious crimes, such as human trafficking, murder, drug conspiracies, and other violent crimes. These are among the reasons why some of our cases that we wish would be prosecuted are declined.

I reiterate my thanks to the subcommittee for holding this hearing, for giving these issues the attention they deserve, and for recognizing the need for transparency and accountability in this important area.

This concludes my prepared testimony. I am happy to answer any questions that the members of the subcommittee may have.

COMMITTEE ON NATURAL RESOURCES
114th Congress Disclosure Form
As required by and provided for in House Rule XI, clause 2(g)(5)

June 23, 2016

*“The Administration’s Response to Findings of Unethical and Criminal
Conduct at the Department of the Interior”*

For Individuals:

Name:
Address:
Email Address:
Phone Number:

* * * * *

For Witnesses Representing Organizations:

Name: Mary L. Kendall
Name of Organization you are Representing at the Hearing: U.S. Department of the Interior
Business Address: [REDACTED]
Business Email Address: [REDACTED]
Business Phone Number: [REDACTED]

* * * * *

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2. Please list any federal grants or contracts (including subgrants or subcontracts) related to the subject matter of the hearing that were received in the current year and previous two calendar years by you or the organization(s) you represent at this hearing, including the source and amount of each grant or contract.

3. Please list any contracts or payments originating with a foreign government related to the subject matter of the hearing that were received in the current year and previous two calendar years by you or the organization(s) you represent at this hearing, including the amount and country of origin of each contract or payment.