

OVERSIGHT OF THE ACTIONS, INDEPENDENCE AND ACCOUNTABILITY OF THE ACTING INSPECTOR GENERAL OF THE DEPARTMENT OF THE INTERIOR

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

Thursday, August 2, 2012

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**OVERSIGHT HEARING ON “OVERSIGHT OF
THE ACTIONS, INDEPENDENCE AND AC-
COUNTABILITY OF THE ACTING INSPECTOR
GENERAL OF THE DEPARTMENT OF THE
INTERIOR.”**

**Thursday, August 2, 2012
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to notice, at 10:03 a.m., in Room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Gohmert, Lamborn, Broun, Fleming, McClintock, Thompson, Duncan of South Carolina, Noem, Southerland, Flores, Landry, Markey, DeFazio, Holt, Grijalva, Bordallo, Sablan, and Luján.

The CHAIRMAN. The Committee will come to order, and the Chair notes the presence of a quorum, which, under Rule 3(e) is 2 Members. And I appreciate your being here.

The Committee on Natural Resources is meeting today to hear testimony on an oversight hearing on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior.” Under Committee Rule 4(f), opening statements are limited to the Chairman and the Ranking Member of the Committee. However, I ask unanimous consent that any Members that would wish to have a statement in the record have it by close of business today.

[No response.]

The CHAIRMAN. And without objection, so ordered. I will now recognize myself for 5 minutes.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. Two years ago, members of this Committee called on the Department of the Interior’s Acting Inspector General to conduct an investigation into the Department’s May 2010 Drilling Moratorium Report Executive Summary that was edited to appear as though the 6-month drilling moratorium was supported by engineering experts, when it was not.

After initially declining, the IG ultimately agreed to conduct an investigation. An 8-page report was issued 5 months later that con-

firmed that White House officials were responsible for editing the report's Executive Summary, but the IG was unable to independently verify whether the authors intended to mislead the public.

Since becoming Chairman, this Committee has been conducting an investigation into the editing of this report and how the moratorium decision was made. Along the way, troubling questions have arisen about the thoroughness and independence of the Acting IG's investigation, as well as the IG's unwillingness to fully cooperate with the Committee's investigation.

The Inspector General Act of 1978 requires the IG to be independent, to cooperate with and provide information to Congress, and to protect whistleblowers. Essentially, an IG is to be an independent watchdog of the Executive Branch. There are legitimate questions that this independence in this case is being compromised. This includes the refusal of the Acting IG to provide documents subpoenaed by the Committee based on the perceived grounds that the Administration may exert Executive Privilege to withhold these documents. This was done without the Acting IG's office ever being informed by the Administration of its intentions to assert actual Executive Privilege, or ever inquiring if the Administration had any such intentions.

In addition, the documents obtained by the Committee raise red flags about the IG's investigation into the Drilling Moratorium Report. Emails from the IG's investigators detail how they were not able to obtain all DOI documents that may have been relevant to their investigation, and they were not allowed to interview Secretary Salazar or White House staff involved in editing the report.

To quote one such email by a lead investigator—and I am directly quoting now—"I am deeply concerned that this is yet another example of how a double standard is being followed in this investigation in granting great deference to the Secretary's office that would not be granted to any other department bureaus or employees."

Another email the lead investigator wrote—and I again directly quote—"I truly believe the editing was intentional." Let me start over again. "I truly believe the editing was intentional by an overzealous staffer at the White House. And, if asked, I, as a case agent, would be happy to state that opinion to anyone interested."

The thoroughness of the IG's investigation is very important. The IG report is being used by the Obama Administration as a defense that this matter has been investigated and resolved. In reality, the Department has never had to disclose key documents or answer questions on how and why this report was edited.

Finally, it is important to learn more today about the Acting IG's exact role and the participation in a board and the process that produced the Drilling Moratorium Report. In testimony before this Committee in 2010, Ms. Kendall stated that she was not involved in the process of developing this report. However, this statement appears inconsistent with documents showing that she attended meetings with senior Department officials developing the report, receiving drafts of the report in advance of its release, and accepted an invitation by the Department to serve on the Secretary's OCS Safety Oversight Board.

I have to question the ability to be impartial in investigating a matter that one admits to having direct knowledge and involvement with, including direct interaction with the very political appointees on the matter being investigated. This does not strike me as the type of independent role that IGs are expected to serve.

This raises a bigger question about the role of an Acting IG. The question is whether an IG in an acting capacity can truly be impartial investigating an Administration while openly expressing the desire to be the permanent IG—and, of course, that position is nominated by the President.

To be clear, these are not questions broadly about the employees and investigators in the IG's office, but rather about the leadership and administration of the office. The written testimony of the Acting IG seeks to provide a defense and explanation of certain actions, but in several instances it raises yet more questions.

It is hoped that direct answers will be forthcoming, though we are prepared to take the necessary steps, including those that extend beyond today's hearing, to ensure we receive all of the facts.

[The prepared statement of Mr. Hastings follows:]

**Statement of The Honorable Doc Hastings, Chairman,
Committee on Natural Resources**

Two years ago, Members of this Committee called on the Department of the Interior's Acting Inspector General to conduct an investigation into the Department's May 2010 Drilling Moratorium Report Executive Summary that was edited to appear as though the six-month drilling moratorium was supported by engineering experts when it was not.

After initially declining, the IG ultimately agreed to conduct an investigation. An 8-page report was issued five months later that confirmed that White House officials were responsible for editing the report's Executive Summary, but the IG was unable to independently verify whether the authors intended to mislead the public.

Since becoming Chairman, this Committee has been conducting an investigation into the editing of this report and how the moratorium decision was made. Along the way, troubling questions have arisen about the thoroughness and independence of the Acting IG's investigation, as well as the IG's unwillingness to fully cooperate with the Committee's investigation.

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This includes the refusal of the Acting IG to provide documents subpoenaed by the Committee based on the perceived grounds that the Administration may exert Executive Privilege to withhold these documents. This was done without the Acting IG's office ever being informed by the Administration of intentions to assert actual Executive Privilege or ever inquiring if the Administration had any such intentions.

In addition, documents obtained by the Committee raise red flags about the IG's investigation into the Drilling Moratorium Report. Emails from the IG's investigators detail how they were not able to obtain all DOI documents that may have been relevant to their investigation, and they were not allowed to interview Secretary Salazar or White House staff involved in editing the report.

To quote one such email by a lead investigator, "I am deeply concerned that this is yet another example of how a double standard is being followed in this investigation in granting great deference to the Secretary's office that would not be granted to any other department bureaus or employees."

In another email, the lead investigator wrote, "I truly believe the editing 'WAS' intentional—by an overzealous staffer at the White House. And, if asked, I, as the case agent, would be happy to state that opinion to anyone interested."

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To be clear, these are not questions broadly about the employees and investigators in the IG's office, but rather about the leadership and administration of the office. The written testimony of the Acting IG seeks to provide a defense and explanation of certain actions, but in several instances it raises yet more questions.

It is hoped that direct answers will be forthcoming, though we are prepared to take necessary steps, including those that extend beyond today's hearing, to ensure we receive all of the facts.

The CHAIRMAN. And with that, I will recognize the distinguished Ranking Member.

STATEMENT OF THE HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF MASSACHUSETTS

Mr. MARKEY. Thank you, Mr. Chairman. I am giving my remarks today while playing the BP Spill Cam. I am doing this not because I like watching millions of barrels of oil gush into America's waters and pollute our shores, but rather to help my Republican colleagues remember the disaster they now seem to have completely forgotten.

It is bad enough that the Republican House has not passed a single piece of legislation to improve the safety of offshore drilling. Last week Republicans passed two bills that would put the American people at greater risk of another devastating oil spill. One bill would force us to rush new drilling off the beaches of California, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and other States, all without any new safety reforms. The other, the Republican Regulatory Freeze Act, would block all manner of health, safety, and environmental protections, including new safeguards being developed by the Department of the Interior to improve the safety requirements for offshore blow-out preventers, cementing, casing, and well design.

Compared to these bills, the investigation we are dealing with today has the advantage of being trivial. But it is no less misguided. We should be thanking today's witnesses for helping to highlight important safety reforms at the Interior Department and prevent another catastrophic spill from every happening again. But the Committee Republicans aren't interested in looking at reforms to improve the safety of offshore drilling. Instead, we are here to investigate the investigation of a 2-year-old copy-and-paste mistake.

Nearly 30 days after the BP spill, with oil still gushing into the Gulf, Administration officials worked late into the night on a report from the Secretary of the Interior set to be released the next day that offered recommendations to the President on how to respond. Between the hours of 11:00 p.m. and 3:00 a.m., text was moved around in the Executive Summary in a way that created ambiguity about whether the report's external peer reviewers, many of whom consulted for the offshore drilling industry, supported a 6-month moratorium on drilling in the Gulf of Mexico. The reviewers endorsed an undefined temporary pause in deepwater drilling, but did not review the recommendation of a 6-month moratorium.

When some of the external reviewers expressed concerns about the Executive Summary, Secretary Salazar immediately sent public apology letters to them, clarifying that their recommendation for a 6-month moratorium was his alone. Secretary Salazar.

Congressional Republicans, including our Chairman, then asked the Interior Department's Office of Inspector General to investigate whether the edits were intentional and politically motivated. The OIG reviewed drafts of the report, emails exchanged between the Department of the Interior and the White House, and interviewed peer reviewers, as well as Department of the Interior employees involved in the editing. The conclusion? There was no evidence of wrongdoing.

Not satisfied with this conclusion, the Committee Majority has responded by turning its investigation to the Acting Inspector General, Mary Kendall. But the Majority's problem is not really with Ms. Kendall. And it is not with the White House or the Interior Department, either. The Majority's problem is with the facts. The facts don't show what the Majority wants them to show. So, now, all that is left is to investigate the investigation.

I want to close again by reminding the Majority of what was happening at the time. Look at these monitors. This is what Secretary Salazar and the others in the Administration were trying to stop. This is what they wanted to prevent from ever happening again. And this is what we in this Committee should be working to prevent. This is under the jurisdiction of this Committee, to put the safety measures in place to make sure it does not happen again. And this is what this Committee has avoided doing for 2 years to protect against a repetition.

Instead, the Majority is wasting the Committee's time on this trivial and baseless investigation of an investigation. Thank you, Mr. Chairman.

[The prepared statement of Mr. Markey follows:]

**Statement of The Honorable Edward J. Markey, Ranking Member,
Committee on Natural Resources**

I am giving my remarks today while playing the BP spill cam. I am doing this not because I like watching millions of barrels of oil gush into America's waters and pollute our shores, but rather to help my Republican colleagues remember the disaster they now seem to have completely forgotten.

It's bad enough that the Republican House has not passed a single piece of legislation to improve the safety of offshore drilling. Last week, Republicans passed two bills that would put the American people at greater risk of another devastating oil spill.

One bill would force us to rush new drilling off the beaches of California, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey,

Maryland, Virginia, North and South Carolina and in Bristol Bay off Alaska, all without any new safety reforms. The other, the Republican “Regulatory Freeze Act,” would block all manner of health, safety and environmental protections, including new safeguards being developed by the Department of Interior to improve the safety requirements for offshore blowout preventers, cementing, casing and well design.

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Instead, the Majority is wasting the Committee’s time on this trivial and baseless investigation of an investigation.

The CHAIRMAN. I thank the gentleman for his statement. And I want to welcome the Acting Inspector General of the U.S. Department of the Interior, Ms. Mary Kendall. Thank you very much for being here.

You have been in front of the Committee before, so you know how the lights work. But let me remind you again. Your full statement will appear in your record, and we all have your extensive full statement. When the green light comes on, the 5-minute clock starts. And when the yellow light comes on you have 30 seconds. And I would ask you to keep your remarks within that timeframe, if you could.

And so, with that, welcome. And you are recognized for 5 minutes.

STATEMENT OF MARY L. KENDALL, ACTING INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF THE INTERIOR

Ms. KENDALL. Mr. Chairman and members of the Committee, good morning and thank you for holding this hearing today. As you know, Inspectors General are appointed or designated without re-

gard to political affiliation and solely on the basis of integrity and demonstrated ability in a number of fields, pursuant to Section 3 of the IG Act.

Section 2 of the Act establishes independence and objectivity expectation. Although neither appointed nor designated, Acting Inspectors General are expected to conduct themselves with integrity, independence, and objectivity in a non-partisan manner.

For the past 4 months, I have weathered the scrutiny of this Committee, which has used a unilateral approach to investigate me by requesting select documents from the Office of Inspector General, drawing conclusions from those documents without all the facts, and presenting those conclusions to the public via press releases, challenging my integrity, independence, and objectivity. Therefore, I welcome the opportunity to testify today, respond to questions, and present all the facts as I know them.

The letter requesting my attendance at this hearing said I should be prepared to answer questions about my role relative to the 6-month drilling moratorium in the Gulf of Mexico following the Deepwater Horizon disaster, the OIG investigation into perceived representation that the moratorium decision had been peer reviewed, my response to a Committee subpoena for documents, the independence and effectiveness of an Acting Inspector General, and my previous testimony before the Committee. In short, I can answer these issues as follows.

I stand behind the OIG investigation into the allegation that DOI senior officials, in an effort to help justify their decision to impose a 6-month moratorium on deepwater drilling, misrepresented that the moratorium was reviewed and supported by the National Academy of Engineering Scientists and industry experts. This alleged misrepresentation was contained only in the Executive Summary of a report commonly called the 30-Day Report. Therefore, the Executive Summary was the focus of the OIG investigation.

The question of whether there was intentional misrepresentation came down to a review of emails exchanged between DOI and the White House in the late hours of May 26th and early hours of May 27, 2010, in which the Executive Summary was being edited. These emails revealed no evidence that the Executive Summary was intentionally edited to lead readers to believe that the moratorium recommendation had been peer reviewed.

This Committee has posted on its website a number of emails from the case agent who investigated the peer review issue that suggest he was not allowed to conduct every investigative step he wanted to take. None of the agent's complaints was made known to me during the course of the investigation. Had they been brought to my attention, I would have addressed them directly with the case agent. But in the end, based on what the case agent presented to me, I was confident that our investigation was well done, thorough, and to the point, which is precisely what I expressed to the case agent directly in email.

Until this matter, in my 26 years with the Federal Government, I have never experienced an instance in which Executive Privilege came into play. We have since learned that the process by which such differences of position between the legislative and executive branches are resolved is both lengthy and complex. I reiterate my

position that the dispute between this Committee is between this Committee and the Department. The documents are not the OIG's, neither is the privilege the OIG's to either assert or waive.

As Acting Inspector General, I have exercised all the independence and objectivity necessary to meet the OIG mission. I have elected to exercise this independence and objectivity in a way that maintains a healthy tension between the OIG and the Department we oversee. I believe, however, that independence and objectivity are not compromised by a respectful relationship with both the Department and the Congress, the two entities we are charged with keeping fully informed, pursuant to the IG Act. As a result, we have effected a great deal of positive change over the past 3 years, by working with the Department in a spirit of respect to achieve such change.

Although I have testified before this Committee numerous times, I assume that the questions relate to my testimony on June 17, 2010 about which the Committee has said it has serious questions. I addressed those questions in my letter of June 27, 2012 to the Committee, and in my formal statement today.

Mr. Chairman, I hope we can adjourn today having addressed all the questions the Committee may have about me. Although the questions you have raised about me reflect on the OIG, it has become clear that your questions are really about me—if nothing else, from the title of this hearing today.

Mr. Chairman, I have been an attorney and a member of the bar in good standing approaching 30 years. I have been a public servant for over 26 years, all but 3 of those years in the law enforcement arena, without blemish to my record. And I was born and raised in the Midwest, where one's honor and word are sacrosanct.

The past 17 weeks have been the most painful and difficult of my entire career, not only because it taxed on my personal integrity, but because this has eclipsed all the outstanding work that the OIG has done and continues to do.

This concludes my remarks. I request that my corrected formal statement be accepted into the record. And I am prepared to answer any questions the members of the Committee may have.

[The prepared statement of Ms. Kendall follows:]

**Statement of Mary L. Kendall, Acting Inspector General,
U.S. Department of the Interior**

This hearing is the result of a subpoena and a series of letters sent by this Committee to the Office of Inspector General (OIG) for the Department of the Interior seeking documents concerning an OIG investigation conducted in 2010 regarding the drilling moratorium imposed in the Gulf of Mexico following the *Deepwater Horizon* disaster. The subpoena was dated March 30, 2012; the letters were dated April 6, May 2, May 10, May 22, May 30, and June 25, 2012. On May 24, 2012, another letter was issued from Senators Jeff Sessions, David Vitter and John Cornyn, to the Integrity Committee for the Council of Inspectors General for Integrity and Efficiency citing documents obtained by this Committee from the OIG and press releases issued by the Committee.

Inspectors General, are appointed or designated "without regard to political affiliation and solely on the basis of integrity and demonstrated ability" in a number of fields, pursuant to Section 3 of the IG Act. Section 2 of the IG Act establishes the independence and objectivity expectation. Although neither appointed nor designated, Acting Inspectors General are also expected to conduct themselves with integrity, independence and objectivity in a non-partisan manner, and I have conscientiously adhered to these principles during my tenure in the OIG as Deputy Inspector General, General Counsel and Acting Inspector General.

For the past four months, I have weathered the scrutiny of this Committee which has used a unilateral approach to “investigate” me by requesting select documents from the Office of Inspector General (OIG), drawing conclusions from those documents without all the facts, and presenting those conclusions to the public via press releases, challenging my integrity, independence and objectivity. Therefore, I welcome the opportunity today to testify, respond to questions, and present all the facts, as I know them.

Background

On April 20, 2010, an explosion on the *Deepwater Horizon* oil drilling rig resulted in the tragic deaths of 11 rig workers and injuries to 17 others. After burning for two days, the *Deepwater Horizon* plunged to the bottom of the Gulf of Mexico, causing the drill pipe to rupture, resulting in the largest marine oil spill in the history of the United States and an immediate environmental disaster in the Gulf, spilling 4.9 million barrels of oil over a nearly three-month period.

In the wake of this disaster, the President directed the Secretary of the Interior, Ken Salazar, to conduct a thorough review of this event and report within 30 days on what short-term “precautions and technologies should be required to improve the safety of oil and gas exploration and production operations on the outer continental shelf.” This was officially titled, *Increased Safety Measures for Energy Development on the Outer Continental Shelf*, but became commonly known as the “30-Day Report.”

Nearly contemporaneously with the President’s directive, Secretary Salazar created, by Secretarial Order (**Attachment 1**), the Outer Continental Shelf (OCS) Safety Oversight Board (OCS Board). The OCS Board consisted of the Assistant Secretary for Lands and Minerals; the Assistant Secretary for Policy, Management and Budget; and the Acting Inspector General. The Deputy Secretary, on behalf of the Secretary, appealed to me personally to participate on the board as an independent and objective member. I agreed to do so, but made clear that I would conduct myself independently and objectively, and that I would not be a part of any policy decisions.

The OCS Board was charged to:

- 1) provide oversight, support, and resources to the then-Minerals Management Service regarding its responsibilities in the Joint Investigation into the *Deepwater Horizon* disaster;
- 2) provide the Secretary with periodic progress reports regarding the Joint Investigation;
- 3) make recommendations on measures that may enhance OCS safety; and
- 4) make recommendations to improve and strengthen the Department’s overall management, regulation and oversight of OCS operations.

Informational Meetings in the Wake of the *Deepwater Horizon* Disaster

When the President directed Secretary Salazar to recommend short-term actions to improve industry practices and standards for deepwater oil drilling, Steve Black, Counselor to Secretary Salazar, was placed in charge of a team responsible for producing the 30-Day Report that contained these short-term recommendations. I was not a member of that team.

In order to fulfill my role on the OCS Board, however, I needed to gain a basic understanding of deepwater drilling. Therefore, I attended a number of information-gathering meetings, organized by Steve Black, with representatives from industry, government, and the engineering and scientific communities. I viewed these meetings as both educational, in terms of learning about myriad aspects of deepwater drilling, and helpful, in terms of navigating the role of the OCS Board. In **none** of these information-gathering meetings that I attended was the substance of the 30-Day Report discussed.

On May 25, 2010, two days before DOI issued the 30-Day Report, I was invited, as a member of the OCS Board, to attend a conference call intended to provide the National Academy of Engineers (NAE) Peer Reviewers an opportunity to comment on the draft 30-Day Report. I was invited to this conference call for informational purposes only. A copy of the already-written draft 30-Day Report was attached to the email invitation (**Attachment 2**). Neither the OCS Board collectively nor I individually commented on the 30-Day Report.

The 30-Day Report, containing 22 recommendations, was issued on May 27, 2010, together with an Executive Summary (**Attachment 3**), the latter of which was still being drafted by Steve Black between 11:38 p.m. on May 26 and 2:13 a.m. on May 27. The Executive Summary also included the Secretary’s recommendation for a drilling moratorium in the Gulf of Mexico. This moratorium recommendation was **not** contained in the 30-Day Report itself. Upon reading the published report and

the Executive Summary, the scientists and industry experts who peer reviewed the safety recommendations contained in the 30-Day Report expressed concern that the Executive Summary was worded in a manner that implied that the experts had also peer reviewed and supported this policy decision, when, in fact, they had not and did not.

The allegation that certain emails (See **Attachment 2 and Attachment 4**) suggest that I played a significant role in developing what the Committee calls “the Drilling Moratorium Report” (but which should be called the 30-Day Report) is not borne out. The subject emails merely indicated my attendance at informational meetings organized by Steve Black leading up to the 30-Day Report. I did not, however, participate in the drafting of the 30-Day Report. Regardless, the OIG did not investigate the 30-Day Report. Rather, the OIG investigated the editing of the Executive Summary to the 30-Day Report, drafted and edited by Steve Black and White House personnel in the late hours of May 26 and early hours of May 27, 2010, in which the moratorium recommendation was made (**Attachment 5**). Therefore, the OIG investigation into the manner in which the Executive Summary was edited to suggest that the moratorium was peer reviewed, did not present a conflict of interest for me, and my testimony on June 17, 2010 was accurate.

OIG Investigation

At the request of multiple members of Congress (**Attachments 6 and 7**), including the Chair of this Committee, the OIG launched an investigation into the allegation that DOI senior officials, in an effort to help justify their decision to impose a six-month moratorium on deepwater drilling, misrepresented that the moratorium was reviewed and supported by the National Academy of Engineering scientists and industry experts. The requests asked that the OIG “identify when and how the modification of the report occurred” (see **Attachment 6**) and clarified the scope: “To be clear, we are not asking you to investigate the moratorium. We are asking you to investigate the changes made to the 30-Day Safety Report by political appointees that were presented to the public as peer-reviewed scientific paper.” (See **Attachment 7**). Therefore, the Executive Summary—not the 30-Day Report—was the focus of the OIG investigation.

When the OIG opened its investigation, I emphasized to investigative staff that the scope of the investigation needed to stay focused on the Executive Summary to the 30-Day Report, where the moratorium recommendation was made—not the moratorium itself, which was, at the time, still the subject of litigation, and not the 30-Day Report. We assigned a senior special agent to this investigation. He was assisted by, and reported to, then-Director of our Program Integrity office, who was a seasoned manager and senior special agent. I did not have significant personal involvement in the direction of the investigation during its course, as I was focused on the efforts of the OCS Board, and on the efforts of my staff in Denver, Colorado who were conducting a massive evaluation of OCS operations on behalf of the Board. (This evaluation served as the basis for the OCS Safety Oversight Board Report of September 1, 2010. The OIG continued its analysis on several other issues the team had identified, and in December 2010, the OIG issued its own, independent report.)

After conducting interviews of the DOI officials involved in drafting the Executive Summary to the 30-Day Report, the OIG investigating agents reviewed the final email exchange regarding the Executive Summary between DOI and the White House. In the version that DOI sent to the White House, the Secretary’s recommendation for a six month moratorium was discussed on the first page of the Executive Summary, while the peer review language was on the second page of the Executive Summary, immediately following a summary list of the safety recommendations contained in the body of the 30-Day Report. The version that the White House returned to DOI had revised and re-ordered the language in the Executive Summary, placing the peer review language immediately following the moratorium recommendation. This caused the distinction between the Secretary’s moratorium recommendation—which had not been peer reviewed—and the safety recommendations contained in the 30-Day Report—which had been peer reviewed—to become effectively lost, as detailed in our Report of Investigation (ROI). Although the Executive Summary underwent some additional minor editing, it was ultimately published on May 27, 2010, with the peer review language immediately following the moratorium recommendation, resulting in the implication that the moratorium recommendation had been peer reviewed.

All DOI officials interviewed stated that it was never their intention to imply that the moratorium had been peer reviewed by the experts, but rather rushed editing of the Executive Summary by DOI and the White House resulted in this implication. Since the jurisdiction of the OIG does not extend to the White House, we could not

compel an interview with the White House personnel involved in the editing of the Executive Summary. The emails exchanged between DOI and the White House did not reveal evidence that the Executive Summary was intentionally edited to lead readers to believe that the moratorium recommendation had been peer reviewed.

Although I was not significantly involved during the course of the investigation, I was personally briefed by the case agent and the Director of Program Integrity on their findings at the end of the investigation. At no time during the briefing did either of the agents express any concern or disagreement about the way in which the investigation had been conducted, or about the conclusion that, while the edits made by the White House to the Executive Summary caused the perception that the moratorium recommendation had been peer reviewed, we did not have evidence that this was done intentionally. At the end of this briefing, I asked the case agent to draft an outline for approval before he embarked on writing the ROI. Instead, he provided both an outline and a draft of the ROI contemporaneously within days of the briefing. Initially, I was quietly annoyed, until I read the draft ROI, and found that it was very well written by the case agent. This is to simply say that I had no hand in the initial drafting of the ROI.

I was, however, very much involved in reviewing and editing the ROI, as I am in all significant reports that issue from our office. As is my practice, whenever I make changes to a report (be it an investigation, audit, or evaluation), I always check with the report's author to ensure that I have not made changes that cannot be supported by the evidence or work papers (which support audits and evaluations). I did the same in this case, as is evidenced in a series of emails between the case agent and me. Again, these emails suggest no disagreement with the way in which the investigation was conducted or the way the report was written or edited. In fact, the case agent, in one email to me, said:

Mary,

Thank you for your comments on the ROI and investigation.

Your email language [about the exchange between DOI and the White House] was far simpler than my own, yet I believe it still clearly captured our finding that DOI's draft Executive Summary had made the distinction between the safety recommendations that were peer reviewed by the experts, and the 6-month moratorium recommendation, whereas that distinction was lost in the Executive Summary as a result of the edits made by the White House.

Obviously, whether that loss of distinction was intentional on the part of an over-zealous White House staffer/editor, or simply an honest oversight, the jury will always remain out. The reader of the ROI will have to make their own speculations on that topic. (Emphasis added.) (Attachment 8)

In another, the case agent wrote to me, "Hope the overall ROI/investigation was up to par," to which I replied, "Other than a few editing tweaks and trying to simplify the discussion about the e-mails, I thought it very well done, thorough, and to the point." (Attachment 9)

I was, therefore, taken by complete surprise when we discovered emails authored by the case agent criticizing how the investigation was conducted, and expressing his opinion that the edits made by the White House were, indeed, intentionally made to suggest that the moratorium recommendation had been peer reviewed. For example, in an email to an OIG colleague, the case agent said:

Salazar's statement that our ROI concludes it was a mistake and unintentional is a clear attempt to spin our report—I truly believe the editing WAS intentional—by an overzealous staffer at the WH. And if asked, I—as the Case Agent—would be happy to state that opinion to anyone interested. We simply were not allowed to pursue the matter to the WH. But of course that was not mentioned in our report. (Attachment 10)

To the extent that this claim is intended to suggest that I took action to limit the investigation, it is inaccurate. As demonstrated by my emails to the case agent's supervisor (Attachments 11 and 12), I was awaiting an answer to my inquiry of whether the White House official involved in the editing process would be available for an interview or not. I did not receive a response. The jurisdiction of the OIG for DOI to compel an interview does not extend to the White House.

If an OIG investigator (or auditor or evaluator) feels that an OIG report fails to accurately describe the facts uncovered, I expect that employee to bring such concerns to my attention. The case agent in this instance had multiple opportunities to do so, when he briefed me, personally, on his findings at the end of the investigation, as well as during the email exchanges transmitting edits to the ROI. Since I

had also engaged this case agent in such discussions about previous reports, in which he had made his position very clear to me, I am simply bewildered by his silence in this case if he had legitimate concerns about the investigation or the ROI.

For example, in an email string between the case agent and me, as the final edits to the report were being made, the case agent expressed no concerns whatsoever:

From me: (to Case Agent and supervisor) I am attaching language that I propose to replace the narrative on pp. 8–9 of the draft report [discussing the email exchange]. I hope it simplifies the comparison of the draft Executive Summary that was sent by DOI against the drafts that came back from the White House, but if I have somehow changed the meaning of anything, please let me know.

From me: (to Case Agent) Did you have any problems with [my edits to] the e-mail language?

To me: (from Case Agent) Your email language was far simpler than my own, **yet I believe it still clearly captured our finding that DOI's draft Executive Summary had made the distinction between the safety recommendations that were peer reviewed by the experts, and the 6-month moratorium recommendation, whereas that distinction was lost in the Executive Summary as a result of the edits made by the White House.** (Emphasis added.) (See **Attachment 9**)

I invite the Committee to review the edits that I made to the ROI. (**Attachments 13 and 14**—handwritten comments are mine, as is the typewritten insert with proposed changes to language about email exchange between DOI and White House). Not only do I believe that the edits, on their face, made the ROI more objective and easier to read and understand, but I made sure the case agent had ample opportunity to challenge, object to, or change any edit I proposed before it was incorporated into the ROI. The case agent did not challenge, object to, or change any edit.

Subpoena

This Committee has been in discussions with DOI for an extended period of time over access to certain documents. Some of the documents at issue are those that relate to the communications between senior DOI and White House officials regarding the edits made to the Executive Summary to the 30-Day Report, which include the email exchanges referred to above. When this Committee first requested documents from the OIG relating to our investigation, we provided all relevant documents except those documents that DOI's Office of Solicitor advised may be subject to a claim of executive privilege. I say "subject to" because, as we learned from the Department of Justice's Office of Legal Counsel (OLC), only the President can assert executive privilege.

We went on to explain that the claim of privilege is DOI's to assert (on behalf of the President)—not the OIG's. Therefore, we suggested that the Committee attempt to resolve the issue with DOI. We also explained that we had a long-standing written policy agreement (**Attachment 15**) with DOI that it would not decline to provide privileged documents to the OIG so long as we gave DOI an opportunity to claim a cognizable privilege, as it did here. We also explained that in the absence of such an agreement, the OIG may face difficulty in gaining unfettered access to all documents we request.

The Committee next attempted to obtain the 13 documents withheld through a subpoena issued to DOI. We learned that DOI was in the "accommodation" process with the Committee—an established process used in resolving executive privilege issues between the Executive and Legislative Branches—when on April 11, 2012 the Committee issued a subpoena to the OIG for the very same documents (**Attachment 16**).

In our April 18, 2012 response to the Committee (**Attachment 17**), we reiterated our belief that the documents were DOI's to claim or waive privilege, not the OIG's, and declined to provide the documents. On April 26, 2012, we met with the Chair and Committee staff to again explain our position that the OIG could not usurp the President's prerogative to assert executive privilege and that the Committee needed to pursue the documents through DOI.

Independence and Objectivity of an Acting Inspector General

As Acting Inspector General, I have asserted all the independence and objectivity necessary to meet the OIG mission. I have elected to assert this independence and objectivity in a way that maintains a healthy tension between the OIG and the Department we oversee. I believe, however, that independence and objectivity are not compromised by a respectful relationship with both the Department and Congress,

the two entities we “generally report to” pursuant to the IG Act. As a result, we have affected a great deal of positive change over the past 3 years, during my tenure as Acting Inspector General, by working with the Department in a spirit of respect to achieve such change.

As for the question of whether an Acting Inspector General is capable of asserting the necessary independence and objectivity, the answer is yes. Acting Inspectors General are fully capable of asserting the necessary independence and objectivity, as most are long-time career civil servants, many having a long history with and understanding of their departments and agencies, and have the protections afforded all civil servants.

Conclusion

This Committee has repeatedly said that it has questions about me, my independence and objectivity, and my integrity. I hope we can adjourn today having addressed all such questions that the Committee may have. I have been an attorney and member of the bar, in good standing, for nearly 30 years; I have been a public servant for over 26 years, all but three of those years in the law enforcement arena, without blemish on my record; I was born and raised in the Midwest, where one’s honor and word are sacrosanct. The past 17 weeks have been the most painful and difficult of my entire career, not only because of the attacks on my personal integrity, but because this has eclipsed all the outstanding work that the OIG has done and continues to do.

[NOTE: Attachments have been retained in the Committee’s official files.]

The CHAIRMAN. Thank you very much for your statement. And, as I mentioned earlier, your full statement will appear in the record. And I too hope the outcome that you expressed as an outcome that we can have with the Members here. But there are concerns, as I had mentioned. Let me recognize myself, then, first, for 5 minutes.

You know, Ms. Kendall, that I have significant concerns about how the IG’s investigation was handled, and about your conflicting participation on the OCS Safety Oversight Board. The IG was designed to be an independent watchdog. Your involvement in the Safety Oversight Board, a policy body, changes that role, in my view. In that role, you became an appointed policy maker. In this capacity, you repeatedly interacted with the political appointees who wrote the report and the Executive Summary. You were a first-person witness to that process.

It is very difficult to understand how you cannot see how the dual roles are in conflict. You are supposed to be the independent and objective investigator. You stated that in your statement. But when you are participating in meetings or conference calls, and receiving draft documents on these very same issues that your office may be asked to investigate—and, of course, then did investigate—it is clear your primary function was compromised. That you did not see this participation is an apparent conflict of interest, or something that would raise questions about your independence, it is that action or those actions that trouble me the most.

So, my questions are: Why didn’t you decline the Administration’s request to serve on the Safety Oversight Board when it was clear that it would place the integrity and the independence of the IG’s office into question?

Ms. KENDALL. Mr. Chairman, I recognize the potential for an apparent conflict of interest at the outset of my acceptance as a member of the Safety Oversight Board. But the Department was responding to a crisis. I did not think it appropriate for me to say, “No, you go ahead and deal with this crisis, and I will just stand by and critique you if things go wrong.”

The CHAIRMAN. Well, I have a short time here. But by your own admission, you were unfamiliar with the details of what this oversight—and by your own admission, one of the reasons that you wanted to be involved in the whole process was to bring yourself up to date. Is that correct?

Ms. KENDALL. I participated in informational meetings to bring myself up to date.

The CHAIRMAN. Up to date on issues you didn't really know anything about.

Ms. KENDALL. I didn't know anything about them.

The CHAIRMAN. You didn't know anything about it, and yet you were accepting a policy position within the Administration.

Let me ask this—

Ms. KENDALL. I made it clear that I would not participate in policy decisions—

The CHAIRMAN. This is a policy board. It was—

Ms. KENDALL. It was not a policy board, sir. It was a board asked to bring safety recommendations—

The CHAIRMAN. Right, which is policy. That is policy. That is policy.

Can you provide an example of prior times when IGs have participated in policy groups like this?

Ms. KENDALL. I do not have an example on the top of my head, but I would like to note that the IG became one of the most effective tools the Department had because of my participation on this board. In our massive evaluation of the Outer Continental Shelf operations, which served as the basis of both the OCS board report in September of—

The CHAIRMAN. Right, exactly. That is exactly the point. You were working side by side and, in other words, you were working on policy.

Now, since there were some questions raised on the Summary, which we asked you to look at, and considering that you worked right alongside the people that are being investigated, why didn't you recuse yourself after we had asked you, and knowing that your participation earlier—why didn't you recuse yourself from the Executive Summary, and the editing, and so forth?

Ms. KENDALL. I did not participate in either the 30-Day Report or—

The CHAIRMAN. I know you didn't. But you—

Ms. KENDALL [continuing]. The Executive Summary.

The CHAIRMAN. But there were people that were involved with that.

Let me ask this question, then. Did the people that were investigating, your IG inspectors, did they know that you had participated prior to the Executive Summary, and had conversations and documents? Did they know that?

Ms. KENDALL. I don't know that.

The CHAIRMAN. Well, now, you are the—

Ms. KENDALL. Oh, wait. I do know that, sir. I actually had an email that I received from the case agent, who said, "In your role as a member of the Safety Oversight Board, if there is anything I can do to help, I would like to."

The CHAIRMAN. Have you provided—

Ms. KENDALL. So he did know.

The CHAIRMAN. Have you provided that to the Committee?

Ms. KENDALL. I would think so.

The CHAIRMAN. But you don't know?

Ms. KENDALL. I don't know.

The CHAIRMAN. All right. My time is running out here. But it appears there is inherent conflict when the role of the IG is expanded to a political policy appointee, which—I think that has happened.

Congress, I believe, demands that the IG be independent watchdogs of the administration. That is the intent of the law. But I think that just clearly, this sort of give-and-take we had, to me, raises more questions.

But my time has clearly expired. So I will recognize the gentleman from Massachusetts.

Mr. MARKEY. Thank you, Mr. Chairman. Ms. Kendall, this Committee voted yesterday to subpoena five Interior Department officials. Your office interviewed two of these officials as part of your investigation: Steve Black and Neal Kemkar. Do you have any evidence that Mr. Black or Mr. Kemkar were being untruthful when they told your office that there was no intention to mislead in the editing of the report?

Ms. KENDALL. No, we do not.

Mr. MARKEY. The remaining three individuals this Committee voted to subpoena are Mary Katherine Ishee, Walter Cruickshank, and Kallie Hanley. Is there any reason to believe that any one of these people has important information related to this investigation?

Ms. KENDALL. I have no information to believe that they were involved in either the 30-Day Report or the Executive Summary.

Mr. MARKEY. The core function of IGs is to improve the effectiveness and efficiency of Department programs, and to uncover fraud, waste, and abuse. In many ways, IGs look out for the taxpayer, to make sure they get their money's worth from the Federal Government.

How much of your office's time and resources have been consumed responding to the Majority's investigation of this one issue?

Ms. KENDALL. I have not calculated that amount, but it has been significant.

Mr. MARKEY. Have the Committee's multiple and extensive document requests taken you and other senior staff away from your core work?

Ms. KENDALL. I would say yes.

Mr. MARKEY. Ms. Kendall, your office recently provided the Committee a list of many important jobs that are either ongoing or that have been completed over the last 3½ years. You are conducting several ongoing investigations related to the BP spill, including one with the Department of Justice. And you have already completed five investigations related to the BP spill, including cases labeled "Halliburton," and "BP Scam," "Testing, A Blow-Out Preventer," and "BP Safety Failures and Policies." Can you tell the Committee about your investigations into the Deepwater Horizon spill, and what you have found?

Ms. KENDALL. The criminal investigation continues to be ongoing, so I cannot comment on that. We have also—

Mr. MARKEY. Did you say “criminal”?

Ms. KENDALL. Criminal.

Mr. MARKEY. Criminal.

Ms. KENDALL. Yes. That is the investigation being conducted with the Department of Justice. We also conducted an investigation with the Department of Justice on the civil side. The three that you mentioned are not familiar to me. I am not sure that those are ones that came from our office. But they sound like some that have been conducted by some other agencies.

Mr. MARKEY. Could you expand a little bit on what this criminal investigation is looking at?

Ms. KENDALL. I really can't, because it is ongoing. But I am hopeful that it will come to fruition in the fairly near future.

Mr. MARKEY. You served on the Outer Continental Shelf Safety Oversight Board. Can you describe the situation when you joined that board?

Ms. KENDALL. The board was tasked with, basically, overseeing the investigation into the Deepwater Horizon event, and to provide the Secretary with safety recommendations to improve the Outer Continental Shelf operations and oversight by the Department.

Mr. MARKEY. So can you describe your role and the role of the Office of Inspector General in carrying out the mission of the board?

Ms. KENDALL. I offered and then tasked my entire central region to conduct a comprehensive review of the Outer Continental Shelf operations that are overseen by the Department of the Interior. Some 60 people spent 3 months—a very, very short timeframe—to conduct this comprehensive review. And they provided findings and recommendations, as we do as an OIG, to the Safety Oversight Board, which adopted them for themselves to issue their September report. And then the OIG issued an almost exact—but a little more detailed—report of its own in December of 2010.

Mr. MARKEY. Thank you. Now, in this role, were you in any way involved in the drafting or editing of the 30-Day Report or the Executive Summary?

Ms. KENDALL. I was not.

Mr. MARKEY. OK. Do you think your independence was in any way compromised with respect to your subsequent work looking into the editing of the Executive Summary?

Ms. KENDALL. I do not.

Mr. MARKEY. Well, we thank you. And we thank you for your work. You know, your comments about the ongoing criminal investigation, you know, involving all of those companies—and we saw the pictures of what they did in this crime against the environment, the greatest in the history of our country—that is where the work should be of this Committee.

We should find out who did it. We should have them sitting here under oath, the CEOs of each of those companies. That has not happened in a year and a half. And we are waiting for that, and the American people are waiting for this Committee to do their job. Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. Ms. Kendall, I want to take us back to a June 17, 2010 Subcommittee oversight hearing in this room that we had. I asked you if the Office of Inspector General was investigating the circumstances surrounding the editing of the drilling moratorium report. You said no, and went on to add that you were not involved in developing the report.

I would like to show a video clip. Could you please show exhibit six? Number six.

[Video shown.]

Mr. LAMBORN. So, I think you would agree an Inspector General needs to avoid even the appearance of a conflict of interest.

Since that hearing there have been significant questions raised about whether you crossed that line. And, in turn, whether your June 2010 statement might have been misleading. For example, a number of emails and calendar entries have come to light showing that you had access to drafts of the drilling moratorium report in the days before it was finalized. You also attended meetings with both the peer reviewers and the same senior department officials who were later subject of the IG's investigation.

But only 3 weeks after the report was issued, you said here in that clip we just saw that you were not involved in the process of developing the report. After these questions were first raised in May of this year, you wrote to the Committee to say that you did attend a number of these meetings in order to learn about offshore drilling and your role as a member of the Secretary's OCS Safety Oversight Board, and that "in none of these information gathering meetings that I attended was the substance of the 30-Day Report discussed."

So, I am curious. What happened in these meetings? For example, there was a meeting on May 17th of that year that you were invited to with Steve Black, Counselor to the Secretary and lead author of the report. One of the people who is part of this investigation.

Could you show exhibit seven, please?

[Slide shown.]

Mr. LAMBORN. So, on the agenda you will see in the red box to the right, "Walk-Through Document to be Reviewed," and also "Discussion on Document." And then there is a follow-up email from Mr. Black to you and others sending a draft of the report's recommendations and asking for comments and suggested changes "based on your own work to date and today's conversation."

Exhibit eight, please.

[Slide shown.]

Mr. LAMBORN. And then, "Thank you for participating on the call today with the NAE-identified experts. I would be grateful for your comments and any suggested changes by close of business tomorrow, based on your own work to date and today's conversations."

And then, last, there is another email from Mr. Black to you where he thanks you for your participation.

Exhibit nine, please.

[Slide shown.]

Mr. LAMBORN. "And thank you for your kind words, Mary, and for your participation in so many of the meetings and interviews

leading up to this report. Your effort has been enormously impressive, by the way.”

OK. My questions. Do you still stand by your June 2010 testimony that you were not involved in the process of developing the drilling moratorium report?

Ms. KENDALL. I do.

Mr. LAMBORN. And would you agree that an Inspector General needs to avoid any—this is just a rhetorical question—any appearance or actual conflict of interest and lack of independence?

Ms. KENDALL. I do.

Mr. LAMBORN. OK. Considering your significant role in working closely with members of the Safety Oversight Board, do you think you should have recused yourself from investigating the moratorium and the editing of the report to avoid any suggestion that the investigation was compromised?

Ms. KENDALL. To this day I do not.

Mr. LAMBORN. When you testified before the Committee that you were not involved in the “process of developing the report,” do you believe that the process of developing that report includes meeting with the peer reviewers, which you had done before your testimony?

Ms. KENDALL. I attended that meeting for informational purposes, as I did with very many others, where I learned about deep-water drilling, blow-out preventers, drilling margins, drilling mud, pressure testing, negative pressure testing, complexities in orchestrating rigs worldwide. These were the things that I attended these meetings for. I did not participate in developing the 30-Day Report or the Executive Summary.

Mr. LAMBORN. Well, I would have done it differently. I would have met with experts who were not subject to the investigation and gotten briefed by them on the technical issues.

Finally, do you see how people can raise questions that you have been too close to the Department to be objective, and that you were actually able to aggressively investigate the moratorium decision and editing?

Ms. KENDALL. In the context of the crisis in which the Department was responding at the time, I do not.

Mr. LAMBORN. Thank you.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from New Jersey, Mr. Holt.

Dr. HOLT. Thank you. Well, evidently, the Majority here does not—did not—like the conclusions of the report. And so they turned this into an investigation with a number of subpoenas, and now the testimony of the Acting Inspector General.

As I said here yesterday, it is ludicrous. It must look really silly to people outside looking at this. So, here we are spending Committee time subpoenaing people, calling them in because, in the preliminary edition of the report the word “pause” was used. And in the final report a more official sounding word, “moratorium,” was used.

You know, yesterday I went through, at great length, the various synonyms for moratorium, which would include “pause”. I don’t see anything nefarious here. It is simply that the Majority did not like the conclusion, and they want to discredit the report and, unfortu-

nately, try to discredit some hard-working, contentious, altruistic public servants. And I am—I thank you for coming, Ms. Kendall, I am sorry that you have to go through this.

Let me run through a few questions. When the case agent finished a draft of the report, you reviewed that and with an eye toward editing it. Is that correct?

Ms. KENDALL. I edit almost every report that leaves our office.

Dr. HOLT. And so this was standard, as you always do?

Ms. KENDALL. Absolutely.

Dr. HOLT. And after you finished editing, you sent your revisions back to the case agent and ask him if he had any issues with your changes. He responded, “Your email language about the exchange between the Department of the Interior and the White House was far simpler than my own. Yet I believe it clearly captured our finding.” Is that correct?

Ms. KENDALL. That is correct.

Dr. HOLT. If the case agent had concerns, he didn’t communicate them to you at that time, which was the obvious opportunity for him to do that.

Ms. KENDALL. The case agent never communicated any concerns during the course of the investigation. And I met with him at the very end to talk about his findings. He did not express any concerns at that time.

Dr. HOLT. OK. There is now a discussion by my colleagues and others about whether the editing was intentional by an overzealous White House staffer. Do you think that there is evidence to be gained if we conduct a more thorough investigation? Is there more to be brought to light, or do you think that all the facts that are out there have been considered in your investigation?

Ms. KENDALL. We received and reviewed the email exchange in which the editing was done where the moratorium appeared to have been peer reviewed. We reviewed those. They did not indicate anything that it was intentional. The case agent has an opinion, apparently now, that it was. The evidence did not show that.

Dr. HOLT. And the case agent has actually stated that he has an opinion, and that—

Ms. KENDALL. Well, he has stated his opinion.

Dr. HOLT. Yes, and that he calls his position an opinion. Is that right?

Ms. KENDALL. I don’t know that he calls it an opinion.

Dr. HOLT. OK.

Ms. KENDALL. He states it. It is an opinion, however.

Dr. HOLT. Again, a few more questions. Did you interfere with the work of the case agent?

Ms. KENDALL. I did not.

Dr. HOLT. Was the investigation, in your opinion, thorough?

Ms. KENDALL. It was.

Dr. HOLT. Did you find any evidence of wrongdoing?

Ms. KENDALL. We found no evidence that the changes to the Executive Summary to make it look like it was peer-reviewed, the moratorium was peer-reviewed, was intentional.

Dr. HOLT. And in the preparation of your report, were you pressured, asked, directed, in any way influenced to go easy on the Administration?

Ms. KENDALL. I had no conversations with the Department about the report until it was issued. I mean, I let them know that we were doing it, but I did not talk to the Department about the report itself until it was issued.

Dr. HOLT. In your 26 years as a public servant, is this the first time anyone has questioned your impartiality or professionalism or completeness?

Ms. KENDALL. Yes.

Dr. HOLT. Well, I wish I had a little more time now to let you say what I think you are entitled to say about these allegations that your work is not reliable or without integrity. I hope this Committee will give you a full opportunity to address these allegations. And I thank you for your work. And I yield back my time.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. We have had the question asked a couple of times. Why are we here? So that my colleagues will understand why we were here, and so they understand from somebody that went down all around the coast area after this disaster, the biggest disaster to the coastal area came not from the oil that was escaping, it came from the order of this President to have a moratorium on shallow-water drilling that put thousands and thousands of people out of work, put thousands and thousands of people into poverty, put thousands and thousands of people into needy situations because this President acted on the recommendations of experts who did not make those recommendations.

So I think it is critically important that we find out more about the process. And I appreciate the Inspector General's position that it is sufficient to ask individuals if they were involved or if there was a problem. And I think it would come as great news and comfort to investigators all over the country, including the criminal investigators that we have been told are moving forward, if they knew that all they had to do is not gather evidence, not look at hard drives, as people were directed not to do in this case, as we see from the emails, and as they were directed not to review emails of people who were involved.

And, as we see from the email by Richard Larrabee, where he says in a letter, actually, "As you know, I was directed to not ask for Secretary Counselor Steve Black's emails that contained the actual drafts sent to and returned by the White House, even though he told us he had them if we wanted them."

So, let me ask you. Who directed Richard Larrabee not to request those emails, and not to review hard drives?

Ms. KENDALL. I don't know. But—

Mr. GOHMERT. Did you investigate who might have directed him not to acquire those emails? Wouldn't that have been important from Inspector General's standpoint?

Ms. KENDALL. He did receive the emails. These are the emails—

Mr. GOHMERT. The question was who directed him not to?

Ms. KENDALL. Sir, I don't know that.

Mr. GOHMERT. So would it be important to know why Richard Larrabee was lying, if he received emails and he said he was not? Would that cause you concerns with his inconsistency?

Ms. KENDALL. If I may, at Steve Black's first interview with the case agent, he offered the emails to the case agent.

Mr. GOHMERT. He points that out. Ma'am, I have covered that. I am asking you who directed him—he points out that he was told by Black that he could have them, and then he was directed by somebody not to get the emails. Who directed that?

Ms. KENDALL. He chose not to accept them at the time.

Mr. GOHMERT. So he lied when he said he was directed not to ask for them. Wouldn't that be worth investigating, why you are saying Richard Larrabee lied in this letter that he wrote, and said—where he said, "I was directed not to ask for them"?

Ms. KENDALL. I would be interested in knowing who he said—

Mr. GOHMERT. Well, don't you have the authority to ask that question?

Ms. KENDALL. Sir, I have not done anything to put this case agent in jeopardy, because he is, as the—

Mr. GOHMERT. Ma'am, I would submit to you that you have done nothing to put anybody in jeopardy. And your job is to investigate the facts. And if somebody is worthy of being put in jeopardy, you do so.

Ma'am, I heard you say that you could not—in fact, you said, "Gee, I recognized my potential for a conflict of interest, but we were in a crisis and I could not sit by and do nothing." So that tells us you did participate. You couldn't sit by and do nothing. Whereas, ma'am, I would tell you that, as a judge and chief justice, there were times I saw lawyers not doing an effective job, or an investigator not doing what he should have. But I knew I could not compromise my position, because it was too important. So I didn't jump in and do those jobs.

That is what an Inspector General is supposed to do, make sure—as you said, I recognize my potential for a conflict of interest. And you should have protected that. And so, as a result, we have a report that cost thousands and thousands of people more misery than the oil that was coming out of the floor did. We can't even find most of that now. And I would submit to you that you should first do no harm, and you could have avoided the harm if you had helped us get to the truth. You complained about how long this had gone on. I would submit to you if you are consistent, it doesn't go on long at all. I yield back.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Georgia, Mr. Broun.

Dr. BROUN. Thank you, Mr. Chairman. In March 2009, President Obama issued a memorandum expressing how important it was for the public to be able to trust science upon which policy decisions were being made, and that political appointees should not suppress or alter scientific or technological findings or conclusions.

I am very troubled that the moratorium decision was imposed without any scientific support, and that political officials at the Department or the White House altered the 30-Day Report to incorrectly suggest that peer reviewers had endorsed the moratorium when they scientifically did not, all to the contrary of the Obama Administration's own scientific integrity policies.

The IG's office aggressively investigated scientific integrity violations of the past Administration, but seems to have been less aggressive in pursuing this investigation.

So, do you agree that it is inappropriate for political appointees to alter or suppress scientific findings or conclusions?

Ms. KENDALL. I do.

Dr. BROUN. Are there ever any situations where it would be appropriate for a political appointee to alter technical or scientific information?

Ms. KENDALL. I can't think of any.

Dr. BROUN. Ms. Kendall, it has happened. This Administration's transparency seems to be another word. Their transparency is opaque.

Ms. Kendall, part of the purpose of this hearing is to get a better understanding of how the Office of Inspector General has operated in the past 3½ years with an Acting Inspector General. One topic I would like to discuss is the role that the IG plays in investigating ethics complaints. The IG's office conducted a number of ethics investigations of officials in the previous Administration, including a former Secretary and a Deputy Secretary. And I would hope your office is pursuing ethics complaints against officials in the current Administration just as aggressively.

As I understand it, the Department's ethics program provides ethics advice and tracks conflicts of interest in financial disclosures for Department officials. But your office is the one that handles investigations into whether Department officials have violated the ethics laws. This is one area where I could see the importance of a strong working relationship between the Department and the IG.

Does your office get referrals from the Department's Office of Ethics Programs for further investigations?

Ms. KENDALL. We do.

Dr. BROUN. When a complaint is received, what is the process for investigating an ethics complaint? Is it the same as other criminal or program integrity investigation, meaning you review the complaint and decide whether an investigation should be opened?

Ms. KENDALL. Yes.

Dr. BROUN. What is the process?

Ms. KENDALL. The process differs almost every case. But we will review the allegations and determine whether or not it is something that falls within the scope of what we have defined as the high-impact, high-risk cases. And if it does, we will accept it for investigation. Most ethics cases do fall within that.

Dr. BROUN. Maybe you can let me know how you make those decisions about which do and do not. But how many ethics complaints does the IG receive in a given year for investigation? And how many of these comments/referrals are from the Department's ethics programs, compared to hotline, whistleblower complaints, or directly to the IG?

Ms. KENDALL. I don't have that answer. I could get it to you.

Dr. BROUN. Oh, I would appreciate that. How often are these cases referred to the Department of Justice for criminal prosecution? And have you made any referrals at all within the past 3½ years?

Ms. KENDALL. To the Department of Justice for prosecution?

Dr. BROUN. Correct.

Ms. KENDALL. Not that I am aware of, no.

Dr. BROUN. How often are these cases referred?

Ms. KENDALL. Quite rarely. And they are even more rarely prosecuted.

Dr. BROUN. How about in the previous Administration? How many were referred to the Department of Justice?

Ms. KENDALL. I would have to get back to you on that, too. I don't—

Dr. BROUN. I appreciate that. But you have made absolutely zero referrals in the last 3 years. Is that correct?

Ms. KENDALL. I think that is correct, but I would like to be able to confirm that with—

Dr. BROUN. OK. And how come you haven't referred any? Are there no ethics violations in this Administration at all?

Ms. KENDALL. We have had several ethics cases that we have investigated. And, actually, as I am thinking about it, most of the time we will refer them, usually expecting declination. So we may have referred some of those. I would have to get back to you.

Dr. BROUN. Well, please do. My time is running out. But if you can follow up and provide this Committee with a list of complaints of the ethics violations that have been—well, you haven't referred any, but have been referred to you or otherwise been received by your office in the past 3 years, as well as the status of any investigation of any complaint or referral, and would you do that for us?

Ms. KENDALL. We can do that.

Dr. BROUN. Can you do that within the next 2 week period of time?

Ms. KENDALL. Next 2 weeks?

Dr. BROUN. Two weeks. Yes, ma'am.

Ms. KENDALL. I think we can.

Dr. BROUN. Thank you.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Louisiana, Dr. Fleming.

Dr. FLEMING. Thank you, Mr. Chairman. Ms. Kendall, the underlying question here is this 30-Day Report, and whether or not the text was manipulated to show something that really didn't exist, which is that this blue ribbon panel, peer reviewed, as though to make it appear as though they agreed that there should be a moratorium.

Now, it lacks credibility right on the face of it to believe that that wasn't deliberately done. And the reason why is because, after this came out, the President still went on and issued a moratorium. And then, beyond that, it got into court. The President failed in court. And then, once the moratoria ended, the moratorium period ended, then we had a period of what we call permatoriums, slowatoriums, foot dragging, and even today we have seen tens of thousands of jobs lost, rigs that have gone elsewhere, and I would argue have been at more risk, environmentally, because they are going to countries that don't have the level of regulations and oversight that we do.

But I agree with Mr. Gohmert. The real damage here has been done by the Administration itself to prevent people from maintain-

ing, keeping, and acquiring good jobs. And we have lost that, in many cases, forever.

My question for you is you are Acting Inspector General, as I understand it, is that correct?

Ms. KENDALL. That is correct.

Dr. FLEMING. Do you wish to actually be an appointee of the Administration in this position?

Ms. KENDALL. I have expressed an interest, yes.

Dr. FLEMING. OK. So, in effect, you have the role of investigating, potentially, this same Administration that would be potentially selecting you for the job. Is that correct?

Ms. KENDALL. Essentially, yes.

Dr. FLEMING. OK. Then have you not been really in an auditioning kind of position to audition for the Administration? And would that not be a conflict of interest?

Ms. KENDALL. I have an interest in being nominated and confirmed, but I want to do this for the OIG, as an organization, certainly not because I am having a really great time—

Dr. FLEMING. But it wouldn't make sense to make the President mad at you. Is that correct?

Ms. KENDALL. You know, there is a potential for conflict of interest, perhaps, here. But I have seen many of my colleagues rise from the Deputy IG to the position of IG without conflict. And, in fact—

Dr. FLEMING. But not under this President. Now—

Ms. KENDALL. Under this President, as well, yes.

Dr. FLEMING. Oh. Can you give me an example?

Ms. KENDALL. I would say the Department of—well, he went to a different agency, but—

Dr. FLEMING. Right.

Ms. KENDALL [continuing]. Department of Justice Deputy IG who is now—

Dr. FLEMING. And do they come out—did this person, before being promoted or transferred, did this person come out with some negative finding, or investigate the Administration with an adverse finding?

Ms. KENDALL. I am guessing yes.

Dr. FLEMING. You are guessing yes?

Ms. KENDALL. I don't—

Dr. FLEMING. Yes. It sounds like pure speculation. So I will accept that, no, we don't have a good example of that occurring at all.

Also, wouldn't it make sense that, since you were coopted to be in the policy arm of this, and really disengaged from the investigation, that really you are part of the policy—from the get-go what we have learned, in fact, a lot of the facts that we have come out with now shows that the lead investigator was the one who had the concern, although we didn't know about this until we uncovered emails. And so—

Ms. KENDALL. And neither did I.

Dr. FLEMING. OK. So it sounds—it really appears in your testimony and the documentation that we have is that while you were engaged in the policy side of things, that the lead investigator

below you was not in good communication with you, and certainly not plugged in. You even admit that you didn't know about that.

And so it, again, leads to the question. How in the world can you claim to be disinterested and objective, and potentially one who could bring out the negative activities, the improper activities of the Administration, which I think is clear here, with this 30-Day Report? How can you claim to be objective, when, at the very least, you were a part of the policy process?

Ms. KENDALL. I was not a part of the policy process. I was a part of the process of reviewing Outer Continental Shelf operations for safety and operational improvements.

Dr. FLEMING. But is that really your job? Your job is to investigate wrongdoing from the Department of the Interior. Is it not?

Ms. KENDALL. My job is also, in part, to improve the operations—

Dr. FLEMING. But primarily your job is to investigate any fraud, waste, and abuse—any kind of legal problems that may be going on. And you have got investigators that are really not in good communication with you on that.

Ms. KENDALL. And to improve the operations of the Department of the Interior.

Dr. FLEMING. Yes. I would say that answer is unsatisfactory. Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. Ms. Kendall, I would like to focus on the Klamath Basin studies. According to your letter to the Chairman of July 20th, you state, "Given the comprehensiveness of the governing agreements, the transparency being given to the process, and the complete absence to date of any complaints about the manner in which this effort is proceeding, the OIG does not have any plans to conduct any additional reviews at this time." Is that correct?

Ms. KENDALL. That is correct.

Mr. MCCLINTOCK. That there has been a complete absence to date of any complaints about the manner in which the Klamath Basin studies are proceeding?

Ms. KENDALL. We have not received any.

Mr. MCCLINTOCK. Ms. Kendall, on February 24th, an 11-page complaint was filed with the Office of the Executive Secretariat in Regulatory Affairs of the Department of the Interior. It documented allegations of systematic, scientific, and scholarly misconduct relating to the Klamath River Dam removal secretarial determination process.

And it wasn't filed by some gadfly; it was filed by Dr. Paul Houser of George Mason University, who was, at the time, the Bureau of Reclamations Science Advisor and Science Integrity Officer. Specifically, he documented the intentional falsification of scientific results contained in the September 21, 2011 summary of key conclusions of the draft EIS/EIR and related scientific and technical reports, and intentional circumvention of the policy that ensures the integrity of science and scholarship and actions that compromise scientific and scholarly integrity.

Now, given the well-documented complaint of political tampering with scientific data made by the official directly responsible for overseeing the scientific integrity of these studies, your statement that there has been a “complete absence of any complaints about the manner in which the Klamath Basin study is proceeding” is absolutely stunning.

So, I would ask you again. Have there been, in your words, “a complete absence to date of any complaints about the manner in which the Klamath Basin studies are proceeding?”

Ms. KENDALL. Perhaps I needed to be more complete to the Inspector General’s office. If that complaint was referred to our office, I was not aware of it.

Mr. MCCLINTOCK. Well, wouldn’t that be of prime interest to the Inspector General’s office?

Any reasonably competent Inspector General, wouldn’t they be somewhat concerned of such allegations by an official responsible for protecting the scientific integrity of these studies?

Ms. KENDALL. Yes, sir.

Mr. MCCLINTOCK. Mr. Chairman, I would ask unanimous consent to insert in the record the Inspector General’s letter to you of July 20th, and the complaint filed by Dr. Houser of February 24th.

The CHAIRMAN. It will appear in the record, without objection.

[The letter from the Inspector General to the Chairman dated July 20, 2012.]



OFFICE OF
INSPECTOR GENERAL
 U.S. DEPARTMENT OF THE INTERIOR

RECEIVED
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JUL 20 2012

The Honorable Doc Hastings
 Chairman
 Committee on Natural Resources
 Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter of May 30, 2012, in which you requested the following information:

1. A list (containing specific information) of all audits, inspections, program evaluations, investigations, or other IG actions initiated from January 1, 2009 through the present concerning the following topics:
 - a. Department programs and policies involving renewable energy on federal lands (both onshore and offshore);
 - b. Restoration of the Klamath Basin, including any reviews involving the adequacy of the science supporting the Department's restoration plan; and
 - c. Reviews of the Department's implementation of its January 2011 scientific integrity policy.
2. A list (containing specific information) of all claims or allegations of violations of the Department's scientific integrity policies, or any claims or allegations of any other policy protecting the rights of Department employees to communicate their professional views on science, that have been reviewed or investigated by the IG from January 1, 2009 through the present.

The lists you requested are enclosed. We also enclose lists of other energy-related IG reviews that are not specifically focused on renewable energy, as these reflect a significant body of our work. You will notice that an evaluation conducted in 2010 on renewable energy was suspended following a meeting with the Department to discuss our Draft Report. We had endeavored to conduct a comprehensive review of all of the Department's renewable/alternative energy efforts across bureaus. After conducting some follow up work subsequent to our meeting with the Department, we concluded that we could not verify all the information provided to us by the Department on such a comprehensive level without undertaking considerably more field work. Since our data was already dated at the time we met with the Department to discuss the draft, we chose, instead, to focus our attention on more manageable size efforts in which we could be confident of the timeliness and accuracy of our findings, and make more meaningful recommendations. We did this beginning with the Climate Friendly Parks, Program Startup, and BLM Renewable Energy Evaluations. We also have evaluations ongoing in Geothermal

Hydraulic Fracturing and Climate Change. We have Underground Injection Control and Bureau of Ocean Energy Management Renewable Energy Program in our plan for late Fiscal Year '12 and Fiscal Year '13. In conducting these more focused, individual efforts, if we find cross-cutting programmatic weaknesses, overlap, or opportunities for improving management efficiencies, we will roll these up in a more comprehensive compilation report.

We have several efforts listed on the Klamath Basin, but we have not conducted any formal reviews on the adequacy of the science supporting the Department's restoration plan. As a result of your inquiry, however, we did conduct an initial review of the public record.

The Klamath Hydroelectric Settlement Agreement was signed on February 18, 2010 by 48 entities, including the Department, "for the purpose of resolving among them the pending [Federal Energy Regulatory Commission] relicensing proceeding...." All parties are bound by this Agreement "until Facilities Removal has been fully achieved and all conditions of the Settlement have been satisfied." The Agreement covers: Implementation, Studies (including Study Process Guidelines and the Science Process), Environmental Reviews, Secretarial Determinations (that "Facilities Removal (i) will advance restoration of salmon fisheries of the Klamath Basin, and (ii) is in the public interest...."), Costs, Local Community Power (energy power, not physical power), Interim Operations (including an Interim Conservation Plan), and Decommissioning and Removing the Dams. The Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities was also signed on February 18, 2010. It covers: Legal Responsibilities, Precedents, Reservation of Rights, Party Obligations, Project Funding, Coordination and Oversight, Dispute Resolution, Klamath Basin Fisheries Restoration, Reintroduction, Monitoring Program, Water Resources Program, Drought, Climate Change, and Emergency Water Situations.

Based on these agreements, it appears that 33 separate scientific studies were planned in the areas of Data Collection, Engineering, Geomorphology, Construction, Water Quality, Biological, Economic, and Real Estate for use in the Secretarial Determination. Our review of the January 23, 2012 DRAFT Klamath Dam Removal Overview Report for the Secretary of the Interior indicates that more than the 33 studies were done. For example, a Cultural and Tribal study was done that was not listed in the planned studies.

Copies of the studies are available on-line, as are copies of the Peer Reviews done on each of the studies. Our review suggests that the peer reviewers agreed with the methodology and conclusions of the scientific reviews. In fact, a Peer Review was done on the DRAFT Klamath Dam Removal Overview Report to ensure none of the scientific study results were ignored when the Secretarial Determination was made. Meeting minutes for the Klamath Basin Coordinating Council are available from July 2010; a February 2012 Status of Implementation Report, a June 2011 Annual Implementation Report, copies of the Public Review Summaries for the Agreement, the NEPA Review and Environmental Impact Report are also available on-line to the public.

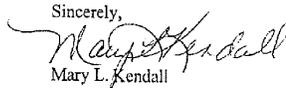
Given the comprehensiveness of the governing Agreements, the transparency being given to the process, and the complete absence (to date) of any complaints about the manner in which this effort is proceeding, the OIG does not have any plans to conduct any additional reviews at

this time. That said, however, if the Committee is aware of any issues relating to Klamath, we will give careful consideration to any request for further inquiry by the OIG.

We have not conducted any formal reviews of the Department's Scientific Integrity Policy, but we have met with the Department, have provided our input into how the Scientific Integrity Board should interface with the OIG, and have agreed on how to coordinate between the Board and the OIG.

We have enclosed a list of all claims or allegations of scientific misconduct, violations of the Department's scientific integrity policies, or of any other policy protecting the rights of Department employees to communicate their professional views on science. While the OIG has, and presumably will again, investigate matters of scientific misconduct, the OIG is not generally qualified to opine on the underlying science in such cases. Therefore, given that the Department has published its Scientific Integrity Policy and established the Scientific Integrity Board means that it will be positioned to address the underlying science when such matters are raised.

If you have any questions, please do not hesitate to contact me, or your staff may contact Kris Kolesnik, Associate Inspector General for External Affairs, at 202-208-5745.

Sincerely,

 Mary L. Kendall
 Acting Inspector General

Enclosures (4)

Mr. MCCLINTOCK. Ms. Kendall, has the Department of the Interior received any complaints by that former official or others alleging scientific integrity violations concerning removal of the dams?

Ms. KENDALL. I would not know what the Department has received, necessarily. Usually things are referred to us. I would have to go back and check.

Mr. MCCLINTOCK. One of the concerns that has been expressed here at this hearing and elsewhere, Ms. Kendall, is a complete lack of focus on the principle responsibilities of the Inspector General.

This report, these allegations of falsification of scientific data were not exactly a secret. They were widely reported in newspaper articles across the Pacific Northwest.

Mr. Chairman, I would also ask unanimous consent to insert in the record articles on this subject from the Redding Record Searchlight, the Capital Press, and the Daily Caller.

The CHAIRMAN. Without objection, they will appear in the record. [The newspaper articles submitted by Mr. McClintock for the record follow:]

Capital Press—California
The West's Ag Website

Dam removal "extreme," says fired scientist

Updated: Thursday, June 07, 2012 10:30 AM

Whistleblower says reports downplayed criticism of Klamath dam removal option

By TIM HEARDEN

YREKA, Calif.—The former U.S. Bureau of Reclamation senior science adviser who claims he was fired in February for speaking out about the Klamath River dam removal process said removing the dams should be an "extreme" last resort.

Paul Houser told about 200 people here May 7 that removing the four dams from the river is "an uncontrolled experiment" with impacts such as poor water quality that could have dire consequences for fisheries.

He said much further study is needed of alternatives such as fish passage, adding that scientists should truck in fish above the dams to see if they can find suitable habitat.

“We don’t know what would happen if we did nothing, so for me, taking the dams out is the most extreme option.” said Houser, 41, a George Mason University professor and former National Aeronautics and Space Administration scientist who was hired last year to oversee the Klamath scientific studies.

“For me as a scientist, I’d like to know more about those less extreme options,” he said.

Houser filed federal whistleblower and scientific-integrity complaints after he says superiors told him his “skills weren’t a match for the position” and terminated him, he said in an interview.

He alleges officials wrote a summary and news release to elicit support for dam removal while downplaying negative remarks from scientists that were in the full reports. He said superiors told him to be quiet about his concerns, then he faced increasing scrutiny on his job.

Interior spokeswoman Kate Kelly said Houser’s complaints are still being reviewed. The Department of the Interior “has established a rigorous and transparent scientific process that is ongoing and will inform the decision about potential removal of the four Klamath River dams,” she said in an email May 8.

Work has been proceeding on a final environmental document that will choose a “preferred alternative” among five options, which range from doing nothing to fully dismantling the four dams in Southern Oregon and Northern California.

Other alternatives being considered include partial removal of the dams while keeping some structures behind, removing only two of the four dams, and installing fish passages around the dams. U.S. Fish and Wildlife Service spokesman Matthew Baun has said.

Houser said in his speech that it appears top Interior officials have already decided they want the dams out and are seeking the science to back up their decision.

“Scientists often do their work based on who they’re paid by,” he said, adding that they stop short of examining all available options. “That happens all the time in science...and you don’t get the unbiased science you need.”

Houser’s speech came during a three-day swing through the region, where he also was slated to address the Siskiyou County Board of Supervisors on May 8 and a tea party meeting later in the evening.

In speaking out, Houser has become a darling of dam-removal opponents and tea party activists, many of whom attended his speech. His appearance was sponsored by the Bi-State Alliance, a recently formed group fighting for water rights issues.

Hearing Houser’s story provides “an assurance that there are honest people in this world and honest people in government,” said Leo Bergeron of Montague, Calif., one of the organizers. “We’ve been dealing with liars and thieves.”

Houser acknowledged in the interview he is concerned that his message may be co-opted by people with political agendas, but he was willing to speak to anyone who would listen. He said he did not initially intend to go public but that others, including Siskiyou County officials, forwarded his complaint letter to the media.

“I wanted to make sure that by moving forward on this that I wasn’t doing it as a benefit to me,” he told the audience. “A lot of scientists in government are doing good work and are afraid to come forward with these kinds of reports because the same thing would happen with them that did with me.”

THE DAILY CALLER

Former Interior Dept. adviser: Administration’s report on dam removal “intentionally biased”

By Alexandra Myers—The Daily Caller 11:40 PM 04/05/2012

A former science adviser to the Department of the Interior’s Bureau of Reclamation was fired in February, shortly after he alleged that the Obama administration intentionally falsified scientific fact in a proposal for dam removal in the Klamath River.

Professor Paul Houser of George Mason University, in a written Feb. 24 allegation to the Office of the Executive Secretariat and Regulatory Affairs in the Department of the Interior, said that Sec. Ken Salazar’s determination to remove the dams resulted in “intentional biased (falsification) reporting of scientific results.”

He also alleged that when he voiced his concern about the scientific integrity of the Department of the Interior’s decision-making process, “[m]y disclosure was never directly addressed.”

And, Houser added, “I faced systematic reprisal.” He was later terminated from his government job.

Interior seems poised to go ahead with the project because there is a possibility it will bring salmon back to the basin. But the loss of low-cost hydroelectricity and

water for irrigation, and the effect demolishing dams would have on human life, are factors Houser believes haven't been addressed.

The Interior completed an environmental impact review, but he said the result of the report was organized in a way that obscures the truth.

While the Interior said that there would be an 81.4 percent Chinook salmon recovery if dams were removed, it did not acknowledge that there are nine factors that could wipe out that recovery even if the dams were removed.

In his allegation, Houser cited a June 2011 report, in which the Klamath River Expert Panel—one of the Interior Department's own scientific advisory groups—concluded that water issues in the lake, reduction in disease and climate change, among other factors, would erase any gains in the fish population.

In January, four months after publishing the environmental impact statement Houser said was falsified, the Interior published a new report about the effects of removing the dams.

That report estimated a net gain of 1,400 jobs and \$60 million in annual income for workers.

Along with helping the salmon, though, the report acknowledged that the move would pose a threat to other aquatic species and fisheries as sediment runs downstream with the rushing water.

There are also risks of short-term flooding to cultural and historic resources in the area.

And still, the question remains whether the removal of the dams will impact salmon recovery at all.

"There are no guarantees that removal of dams will solve disease problems," Oregon State microbiology professor Jerri Bartholomew told The Daily Caller, "but returning the river to a more natural system is expected to bring it into better balance."

If Secretary Salazar decides to remove the dams, it would occur over a one-year period and would begin no later than January 2020. In order for the process to begin, the governors of California and Oregon must agree with the decision.

Kate Kelly, the Interior Department's deputy communications director, told TheDC that the agency would not discuss personnel matters. She did say, however, that Houser's allegation "is being reviewed under the standard procedures contained in Interior's scientific integrity policy."

Kelly said the Department of the Interior examined 50 different scientific reports to determine the economic and environmental impacts the dam's removal would have on the surrounding areas.

"The science is high quality, technically reviewed," Kelly said.

This story was updated after publication to clarify Houser's comments about his belief that the Dept. of Interior never acted on his complaints, and to reflect that the agency's apparent future plans have not yet drawn direct comment from Secretary Salazar.

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URL to article: <http://dailycaller.com/2012/04/05/former-interior-dept-adviser-administrations-report-on-dam-removal-intentionally-biased/>

redding.com

"Whistleblower" will speak about Klamath dam removals; scientist's advice opposed their removal

By Alayna Shulman

Friday, May 4, 2012

A federal agency's former scientific integrity adviser who filed a whistle-blower complaint in February, saying he was fired for his findings on a controversial proposal to remove dams in Siskiyou County, will speak at a meeting Monday in Yreka.

Paul R. Houser will address his complaint at the meeting of the Cal-Ore Bi-State Alliance at 6:30 p.m. in the Flower Building of the Siskiyou County fairgrounds, 1712 Fairlane Road.

Houser filed the complaint with the Department of the Interior in late February.

This week, Houser, who lives in Maryland and teaches at George Mason University in Virginia, said the chance of his case succeeding seems slim, but he's not giving up hope that his complaint will be acknowledged.

"The success rate of cases like mine is very low," he said. "The laws are pretty stacked against employees, and even though . . . I took all this training about the

No FEAR Act and whistle-blower protection . . . when it comes down to it, I'm finding that the protection is much weaker than they claim."

Kate Kelly, a spokeswoman for the Department of the Interior, said in an email to the Record Searchlight that Houser's complaint is still being reviewed.

Houser said attorneys he has met with have estimated it would cost at least \$50,000 to pursue a legal case if his complaint is denied, and he's hoping for pro bono legal representation if that's what happens.

He was hired by the Bureau of Reclamation in April 2011 to check the integrity of studies on the Klamath dam removal.

But Houser said the department didn't like his findings that said removing the four dams, three of which are in Siskiyou County, wouldn't be as beneficial to salmon as staff members of Interior Secretary Ken Salazar made it seem.

Houser also said in his whistle-blower report that the dam removal and extra environmental work that would go along with it would cost more than \$1 billion.

The dams are owned by PacifiCorp, a private company that wants to remove them.

Proponents of the dam removal say it will restore salmon habitats and resolve water conflicts in the region, but those opposed to the proposal say it will cost too much money and rob area residents of needed hydroelectric power.

Houser said his complaint is about fixing a corrupted system, not promoting any political ideals.

"Scientists can do good science, but they're being directed to do only a certain kind of science," he said.

He said he objects to such "biased science," where a scientist is paid to justify decisions that already have been made.

Houser said his goal in filing the complaint is to promote integrity, exactly what he was hired to do.

He said he'll discuss his findings and some of the things the dam studies didn't address, such as the dam removals' potential to release toxic sediment into waterways.

Frank Tallerico, a Yreka resident and one of the founders of the Cal-Ore Bi-State Alliance, said the group, which was formed in October, is hosting Houser because members are focused on standing up to government corruption.

"I think from our perspective, we need to support someone who is willing to put his job on the line," Tallerico said.

He said the counties in southern Oregon and Northern California within the alliance—Josephine, Jackson, Klamath, Siskiyou and Modoc—have similar environmental concerns that are often ignored by the state and federal governments.

"We're not in any way violent people or anything. We just want to make sure that all of the avenues that would be more beneficial to either the fish or man and/or both . . . are implemented, and the law is followed," he said. "That is our goal."

He said all are welcome to attend the meeting.

An agreement to study taking down the dams was made between federal officials, farmers, fishermen, conservation groups, American Indian tribes, Oregon and California governors and the owners of the dams about two years ago.

Salazar was given until March 31 to make a decision on the project, but he said in February he'd have to wait because he hadn't gotten backing from Congress yet, which still hasn't happened and is needed to make the final call.

Mr. MCCLINTOCK. Did you not consider—you have said that you would consider this of interest to the Inspector General's office, but you have not looked into it?

Ms. KENDALL. I do not know that we have looked into it. I think it is something we should look into.

Mr. MCCLINTOCK. Why haven't you looked into it?

Ms. KENDALL. I am not aware of it, sir.

Mr. MCCLINTOCK. Have you or anyone in your office, to your knowledge, had any discussion with the Secretary's office, including the Chief of Staff, about Dr. Houser's complaint or your office's investigation of it?

Ms. KENDALL. None that I am familiar with, no.

Mr. MCCLINTOCK. In the list of complaints that you provided to the Committee, there is one by Kira Finkler. Is that correct?

Ms. KENDALL. If that is in the documents——

Mr. MCCLINTOCK. What was that regarding?

Ms. KENDALL. I don't know.

Mr. MCCLINTOCK. Well, Kira Finkler was Dr. Houser's boss at the Bureau of Reclamation. She was the official to whom he originally brought these allegations. Her response was to fire him. She is also the person who was overseeing the Klamath Dam restoration agreement to which Trout Unlimited is a signatory, and she was employed by Trout Unlimited from 2004 to 2007, but did not recuse herself from the Klamath project, even in light of this apparent conflict of interest.

Now, I ask you again. A complaint regarding her was in your list of complaints provided to the Committee. What is that about?

Ms. KENDALL. You have provided me enough information now. I do remember that we received this complaint. I don't have detailed information about what happened to it. We could get back to you on——

Mr. MCCLINTOCK. You know, this is absolutely stunning. This is a significant matter. It involves a proposal that has huge environmental, fiscal, and economic impact throughout the entire region. And you seem oblivious to it. I find that remarkable.

And, Mr. Chairman, I would like us to further this inquiry at a later time.

The CHAIRMAN. The time of the gentleman has expired. And that is of interest to the Committee.

The Chair recognizes the gentleman from Florida, Mr. Southerland.

I am sorry, I didn't see the distinguished Chairman, the Subcommittee Chairman, come in. I am sorry about that. Mr. Grijalva is recognized for 5 minutes.

Mr. GRIJALVA. Not only distinguished, but a promotion all in one. [Laughter.]

Mr. GRIJALVA. My wishful thinking, by the way. Anyway, Ms. Kendall, thank you for being here. In listening to this, it is kind of—not confusing, but just astounding to me that, as we debate what I think is a point, but a semantical point of “pause,” “moratorium,” and we call the process right now worse than the catastrophe itself, even though that cost lives and millions and billions of dollars in cost, both to clean up and to the economy of the region. We seem to skirt that issue as we try to somehow nail down a semantical difference as being the root cause of everything that happened in the Bay.

But anyway, Ms. Kendall, the Safety Oversight Board report that you issued to the Secretary, it states that “The oil industry must make a widespread, forceful, and long-term commitment to cultivating a serious approach to safety that sets the highest safety standards and consistently meets them. Ultimately, for a new and robust safety culture to take root, industry must not only follow the rules, it must assume a meaningful leadership role.”

The Majority of this Committee has refused to invite the CEOs of the largest oil companies to testify on what changes they have made to that culture, as industry leaders, to improve the safety of offshore drilling following the spill. In fact, BP's CEO has never testified before Congress since assuming that position.

Don't you agree that the heads of the largest oil companies should come before Congress so that the American people can hear what actions they have taken to assume the meaningful role in developing the new safety culture that was called for in the report?

Ms. KENDALL. I would certainly like to know if that safety culture has been instituted. I think it was very important to the Safety Oversight Board at the time, that some of the responsibility be placed on industry, as opposed to primarily government being the oversight and the imposer of responsibility.

Mr. GRIJALVA. And, Ms. Kendall, in the report it recommends also evaluating the rates and structure of civil penalties and possibly initiating the legislative process to ensure that penalties are appropriately tied to the severity of the violation.

Right now, the maximum fine the Interior Department can levy for oil companies that commit violations offshore is \$40,000. That is a slap on the wrist for most companies operating offshore. For instance, the maximum fine that Department of the Interior could levy against BP for the oil spill would be \$21 million.

Former Director of the agency and the Director of BOEM have both said that Congress should increase these penalties significantly to provide a sufficient financial deterrent to companies who violate the law.

Would you agree that Congress should look at raising these penalties significantly, as stated in the report?

Ms. KENDALL. Yes. Our recommendation was to work with Congress to review how these penalties are imposed, and what the caps are.

If I recall correctly—and I don't have perfect recall at this point—but there was some restriction that the Department could not do this unilaterally, and needed help from Congress.

Mr. GRIJALVA. Thank you, and——

Dr. HOLT. Would you yield?

Mr. GRIJALVA. Let me yield to the gentleman.

Dr. HOLT. Thank you. I would like to bring this discussion back to earth.

The other side said the question is did the Department of the Interior deliberately agree that there should be a moratorium. Well, there is no question that they deliberately said there should be a pause. So we could spend all day or all month or all year investigating whether pause equals moratorium, and whether we should ruin people's careers in the Department of the Interior because of that difference. But it is all based on this, really, sad misunderstanding from the other side of the aisle here, that somehow the moratorium is worse than the oil spill disaster.

This moratorium—and remember that we now have 50 percent more floating rigs working in the Gulf than we did before the BP spill; during this delay/pause/moratorium there were no lay-offs. And yet, because of the spill, because of the dispersants that were used, because of the oil that was spilled, there was enormous environmental damage. We know there is enormous economic damage. And there were lives lost.

Don't tell me that "pause" or "moratorium" is worse than the disaster. And we should be investigating the disaster and the effects of that disaster and the steps to provide safety and public health

and environmental protection into the future, rather than yanking people before this Committee to talk about whether they deliberately changed the word “pause” into “moratorium”. Come on.

The CHAIRMAN. The time of the gentleman has expired. We have a vote going on. And my intention is to recognize Mr. Southerland, and then after that we will break. We have two votes. And we will reconvene. This is important timing. We will reconvene 10 minutes after the start of the last vote. As soon as this second vote starts, 10 minutes thereafter we will reconvene.

The Chair recognizes the gentleman from Florida, Mr. Southerland.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I have to say, Mr. Chairman, I find it somewhat disturbing that some of my colleagues claim that those of us who live on the Gulf of Mexico have completely forgotten this disaster. I think it is grotesque in their accusations, when I live each and every day with people that have been affected by this. My family has been affected by this. And I think it is unbecoming of their position, especially the Ranking Member.

I would like to say to Ms. Kendall I am concerned that, in the past, government officials have used their personal email account as a way to avoid scrutiny by Congress and the public. I am also concerned that sensitive investigative or law enforcement information would be treated so casually that it would be sent through unsecured means, such as Yahoo! or Gmail, or whatever.

Does the IG have a secure way to access email remotely?

Ms. KENDALL. Yes.

Mr. SOUTHERLAND. Then what is the policy for using your personal email account, rather than your official IG email account?

Ms. KENDALL. I don't know that we have a policy on that.

Mr. SOUTHERLAND. OK. Well then, obviously you have a personal email account, as Members of Congress do, and we all have our official email accounts, as well.

May I ask you how often do you use your personal email account to conduct professional business?

Ms. KENDALL. I use my personal email fairly regularly to send myself reminders to send work that I have worked on at home. But I do not send any sensitive information that would need to be encrypted or have any other kind of protections. We do have a policy on that.

Mr. SOUTHERLAND. So you limit your email use of your personal email account to personal business, or as a reminder from you in your personal email account to your business email account to remind you of stuff that needs to be done?

Ms. KENDALL. Yes, or to transmit, for instance, draft letters back to this Committee.

Mr. SOUTHERLAND. OK. I know, as a part of the emails that your office has provided, there are a number of official IG emails that appear to have been sent from your personal—as you stated, your Yahoo! email account—as opposed to the IG account.

And I would ask at the desk—I know we have an exhibit.

[Slide shown.]

Mr. SOUTHERLAND. You can clearly see from the exhibit that we have on the screen, we have an email that was sent from Stephen

Hardgrove—it wasn't from you, obviously—to you, as a reminder, but it was sent from Stephen with the IG's office, obviously to your personal email account. And down at the bottom, this statement: "I have no problem working closely with the Department on this."

And the whole purpose of this email was the discussion of this was the Safety Oversight Board that has been the center of discussion today, the statement, "I have no problem working closely with the Department on this or other issues, I probably did not realize that the majority of our staff is not yet prepared for it, nor understands it," so based on that, this individual who sent an email to your personal account, was he in violation of the IG policy by sending and corresponding with you on your personal account? And is it fair for us to be curious as to the use of your personal account that could be in violation of the IG policy that you claim you do have?

Ms. KENDALL. Yes. Quite frankly, I don't know the details of the policy, other than on sensitive and encrypted, or sensitive information that needs to be encrypted.

But I am looking back at the date here. I don't know that in 2010 that we had the capacity to access work email from home like this. We do now. But I am not sure that we did at the time.

Mr. SOUTHERLAND. Can you provide the Committee with copies of any internal IG policies, or guidance on the use of personal email for conducting official business?

Ms. KENDALL. If we have it, yes.

Mr. SOUTHERLAND. OK. Well, you claimed just a few minutes ago that you do have it.

Ms. KENDALL. Well, I know we have policy governing email. I don't know if we have policy governing personal email.

Mr. SOUTHERLAND. OK. If you have that, whatever you have regarding email policy, I think it would be helpful for us to see. And I think that would be—obviously, you can understand our concern if there are personal emails being used because we need to do searches. Certainly a person in your position could, and should, understand the conflict there. I mean, is that fair? I mean, you understand my concern?

Ms. KENDALL. I am not sure that I do. But—

Mr. SOUTHERLAND. Well, that is even a bigger problem. And the reason I say that is a bigger problem is because a person in your position, you are paid significantly in your position. You have tremendous authority, people under you. And I find that a leader—which you are in a leadership position—you must at all times practice discretion and discernment borne out of wisdom. And I think that, at the very minimum, that has been brought into question. And—

The CHAIRMAN. The time of the gentleman has expired. I—

Ms. KENDALL. Mr. Chairman, if I may, I did not have an opportunity to finish my answer.

The CHAIRMAN. Real quickly, because we have to break. The vote is getting close. But I will give you 30 seconds.

Ms. KENDALL. I do not understand the concern, because we did provide—and the reason the Committee knows I use my personal email—is we provided those emails to the Committee in response to your requests.

The CHAIRMAN. OK. I appreciate the gentlady's answer.

We will recess again, and reconvene 10 minutes after the start of the second vote. The Committee stands in recess.

[Recess.]

The CHAIRMAN. The Committee will reconvene. The Chair recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFazio. I thank the Chairman. I was in my office and watching a bit of the hearing, and I have to say I am a bit puzzled at sort of the demeanor of some of the Members here, as though some crime has been committed.

It appears that the question is the difference between the word "pause" and the word "moratorium". And I looked up "pause" and I looked up "moratorium". There is no limit on a pause. A pause could be 6 months, a pause could be 12 months, a pause could be a decade. Moratorium has slightly different meaning. But again, there is no duration attached to the word. And in this report, the number six was attached. The number—you know, you could have used the word "pause," and you could have said, "Well, we are going to pause for a year."

And we paused for good reason. The blow-out preventer didn't work. Why didn't it work? It was kind of critical to know why the blow-out preventer didn't work, since that is our last line of defense against catastrophic oil spills. And you know, it appears that the blow-out preventer wasn't capable of cutting at least 10 percent of the pipe as joined, and there were other problems with its maintenance. That has all come out. And so, I think it was very prudent that we took a little time to figure out, "Whoa, we've got a failsafe here, and the failsafe failed."

So, anyway, I would like to just yield some time to the Acting Inspector General, if she has anything to say, because I noted she has had little opportunity to respond to what has been going on here.

Do you have anything you would like to add or elucidate upon? Was I inaccurate in anything I just said?

Ms. KENDALL. I have not looked up the difference between "pause" and "moratorium," so I appreciate that information. And I appreciate the time.

The thing that I guess I would like to come back to is the focus of the investigation that we conducted. And it was very, very focused, primarily because of the words from you, Mr. Chairman, asking that we look at how the Executive Summary was edited to suggest that the moratorium decision was peer-reviewed. And that is what we did. We had the information, the documentation that we needed. It came down to these emails that had been sent in the early morning hours between, I believe, 11:38 p.m. and 2:13 a.m., where the editing had been done. And that is where the editing that was changed by the White House personnel went from suggesting that the moratorium was the Secretary's decision to the moratorium had been peer-reviewed. And that really was the only focus of our investigation. We got all the information that we needed to make that determination, and we did so.

I thank you for the time.

Mr. DEFAZIO. So some over-zealous politically appointed White House staffer, probably junior level, made an edit that they thought added some emphasis to the Executive Summary.

Ms. KENDALL. There was no evidence in the email exchange to suggest that that was done intentionally.

Mr. DEFAZIO. OK. But still, it was done over at the White House by some sort of editing—

Ms. KENDALL. The editing changes that occurred to make this distinction lost, essentially, were the edits at the White House.

Mr. DEFAZIO. OK. But—and I—perhaps you are not an expert on this, but as I understand the peer review, they did recommend a pause, which I mentioned earlier.

Ms. KENDALL. I don't know that.

Mr. DEFAZIO. I believe that they did. And that is why I feel that the focus is on the difference between 6-month moratorium and pause, which could be dramatic, it could be non-existent, a pause could be longer.

So, you know, I appreciate the fact we have had—how many documents now have you provided, or emails?

Ms. KENDALL. I couldn't even begin to count.

Mr. DEFAZIO. Hundreds? Thousands?

Ms. KENDALL. Hundreds, perhaps thousands.

Mr. DEFAZIO. OK. And yet it seems that there is a thirst to spend more time on this issue. Again, I remain puzzled. I appreciate your service and hope that we move on to more important subjects.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has—or the gentleman yields back his time. The Chair recognizes the gentleman from Texas, Mr. Flores.

Mr. FLORES. Thank you, Mr. Chairman. Thank you, Ms. Kendall, for being here.

Before we get into questioning with you, I wanted to respond to a couple things that have been said earlier. Number one is I think it was Mr. Holt said the number of deepwater rigs in the Gulf of Mexico is up 50 percent. That is false. It is down 15 percent, still. So jobs are still being impacted by the moratorium, permatorium, slow-down, whatever you want to call it.

The second thing is the Ranking Member called this hearing trivial. This is not a trivial hearing, in light of the Administration's lack of transparency. This is not trivial, when you have another cover-up called Fast and Furious. It is not trivial when you look at the Department of Labor rewrite of the Warren Act outside of its statutory authority. It is not trivial when you look at the Obama Administration rewrite of welfare laws, contrary to the constitutional authority of the President. And it is not trivial when you look at the abuse that is happening to taxpayer dollars with the GSA. So I just want to get that off the table.

In your written statement, you invited the Committee to review the IG's editing of the November 2010 moratorium report. And so I would like to take you up on that invitation. And if we can bring up exhibit 11—excuse me, exhibit 5, exhibit 5.

[Slide shown.]

Mr. FLORES. In exhibit 5, you struck out the original draft language that stated the IG could not independently validate that the emails provided by Steve Black were complete and unedited. Why did you strike out that sentence?

Ms. KENDALL. You know, I don't have a recollection specifically of actually addressing that issue. But my question would have been to the investigating agent, if I were asking the question today, "What is it that we need to validate? We were provided the documents that"——

Mr. FLORES. Well, let's——

Ms. KENDALL.—"that focused on the question at hand, and that was how did this editing occur."

Mr. FLORES. Well, let's talk about this. One of the things that we need to know about the IG's investigation, and one of the things the American public needs to know about the IG's investigation is, was the scope so inherently reduced that the report is not worth the paper it is written on? And in this case, if you didn't review the White House emails, and I think that is the case, is that correct? You did not review the White House——

Ms. KENDALL. We did review the White House emails.

Mr. FLORES. The ones internally?

Ms. KENDALL. The ones that were exchanged between the Department of the Interior and the White House, where the editing took place.

Mr. FLORES. But none of the ones internally. Is that correct?

Ms. KENDALL. I'm not sure what you're——

Mr. FLORES. Internal to the White House.

Ms. KENDALL. We only had access to those that were provided to us from Steve Black.

Mr. FLORES. Right. OK, but——

Ms. KENDALL. And those were White House——

Mr. FLORES. But none inside the White House. That is where I am trying to go.

Ms. KENDALL. Our jurisdiction does not extend to the White House, sir.

Mr. FLORES. OK. Then don't you think that this statement that got struck, don't you think that would be informative when you look at the report's conclusions, and weighing the assertion by Steve Black, that the peer review language was not intentionally edited to suggest the peer reviewer support of the moratorium?

Ms. KENDALL. What is your question, sir?

Mr. FLORES. So don't you think the statement that you struck, don't you think that would have been informative, when it says that the OIG could not independently verify whether the emails had been edited or not?

Ms. KENDALL. I don't think it was a question of the emails being edited. The emails were provided to us. There was nothing to indicate that they weren't thorough and complete.

Mr. FLORES. OK. Now this kind of a sentence, from what I understand, is fairly common in IG reports. If you left that sentence—I mean, you have had to come out and clarify that you weren't able to independently verify the witness statements. Don't you think it would have been better if you left this sentence in? You wouldn't have had to come back and clarify that. Correct?

Ms. KENDALL. I am not sure what you are asking, sir.

Mr. FLORES. OK. Well, let's move on. Let's move to exhibit 11, if we can, because I am running out of time.

[Slide shown.]

Mr. FLORES. In the last sentence of Mr. Larrabee's report it says, "We simply were not allowed to pursue the matter to the White House. But, of course, that is not mentioned in the report." Don't you think that sentence would have been more transparent, and would have prevented the Secretary from being able to incorrectly claim that the IG's report confirmed that there was no intent to mislead or avoid confusion about what the report found or did not find?

Because, you know, the Secretary has tried to hide behind this, your report, and say, you know, "There was no—nothing went wrong." But what your inspector is saying, investigator is saying, he said, "I couldn't verify that."

Ms. KENDALL. Well, what he is saying is that he could not pursue it to the White House, because our jurisdiction does not extend to the White House.

Mr. FLORES. OK. I think it would have been better to say in the report that you had—the scope was so reduced that the validity of the report itself was in question.

And I am out of time. Thank you. I yield back.

Ms. KENDALL. Well, if I may respond to this, Mr. Chairman—

The CHAIRMAN. Go ahead, please respond.

Ms. KENDALL [continuing]. I will be brief. But the case agent wrote the first draft of the report. And he did not include any reference to this. So it was not as if it was excluded. He did not put it in. I just want to make that clear.

The CHAIRMAN. All right. The time of the gentleman has expired. The Chair recognizes the gentlelady from Guam, Ms. Bordallo.

Ms. BORDALLO. Thank you, Mr. Chairman. If you could, be concise in your answers, because I do have quite a few questions.

After you finished editing, you sent your revisions back to the case agent and asked him if he had any issues with your changes. He then responded, "Your email language about the exchange between DOI and the White House was far simpler than my own. Yet I believe it still clearly captured our finding." Is that correct?

Ms. KENDALL. That is correct.

Ms. BORDALLO. If the case agent had concerns, he didn't communicate them to you when he had the chance. You were surprised when you read some of the case agent's emails that have come out in this investigation, weren't you?

Ms. KENDALL. Very much so.

Ms. BORDALLO. The case agent also speculated in an email to an OIG colleague that the editing was intentional. But he also recognized that there weren't facts to back up his speculation. In fact, he wrote to you that "the jury will always remain out" on this question. And also, "The reader of the OIG report will have to make their own speculations on that topic." Is that correct?

Ms. KENDALL. That is correct, and that is what surprised me the most.

Ms. BORDALLO. All right. Going on, you have been Acting Inspector General for the last several years. Is that correct?

Ms. KENDALL. About 3½ years.

Ms. BORDALLO. How many? Three-and-a-half years, OK. What work has the OIG done during that time that you are most proud of?

Ms. KENDALL. I would say, really, all the work that the OIG has done. But perhaps the most important, particularly relative to this, was the review we did on the Outer Continental Shelf, the comprehensive review, which today is still being implemented by what used to be Minerals Management Service, is now three bureaus in the Department.

Ms. BORDALLO. OK. And did that work achieve benefits for the American people and taxpayers?

Ms. KENDALL. I would say it was one of the most comprehensive and impactful documents that we have issued in a good number of years.

Ms. BORDALLO. Very good. I feel that this is what the Office of Inspector General should be doing, without being distracted by baseless document requests from this Committee. And members of this Committee should understand the important work that you do, and what is at risk if we continue to consume your time on this frivolous investigation. And I want to thank you for what you have done.

Ms. KENDALL. Thank you.

The CHAIRMAN. The gentlelady—

Ms. BORDALLO. I yield back.

Mr. MARKEY. Would the gentlelady yield?

Ms. BORDALLO. Yes.

Mr. MARKEY. Thank you. Maybe it would be possible for you just to elaborate a little bit more on what the benefits were from the work that you have done in the last 3½ years, overseeing the Department of the Interior, so that there can be a fuller understanding of the comprehensiveness of that.

Ms. KENDALL. Well, I am going to be at a loss to sort of cite chapter and verse right here. But I went back and took a look at the last five semi-annual reports that the OIG issued, the first under my signature up to the last. And I was actually pleasantly surprised, but surprised nonetheless, with the incredible amount of work that our office accomplishes every 6 months, and the breadth of the work that we do.

As you know, the Department has nine bureaus and offices that have very, very diverse missions. We go from Indians to minerals to lands to geological survey. And every day is something new. Part of what is so rewarding about working in the Office of Inspector General for the Department of the Interior is the breadth of—

Mr. MARKEY. And how much of a distraction is this investigation that this Committee is trying to conduct thus far, with no avail at all, no evidence at all?

Ms. KENDALL. It is—

Mr. MARKEY. From that other work that you are doing, which sounds like it is critical in making sure that we do root out the wrongdoing that goes on, the inefficiencies that exist.

Ms. KENDALL. Well, it has certainly been a distraction to me. I have kept my eye on what else we are doing, but it has taken a considerable amount of time from me and my senior leaders and

senior advisors. I can't quantify it beyond that, other than it has been considerable.

Mr. MARKEY. And again, thank you so much for your work. Thank you for your contributions to our country. Thank you for the job you and your staff play in providing oversight for this agency.

And again, I can't raise enough times this problem that we have, that this debate over whether or not there was a pause called for or a moratorium called for, and Secretary Salazar is saying that he called for the 6-month moratorium. The Secretary himself, we should bring him here, you know, let him explain what his judgment was.

But we are not going to hear about the spill. We are not going to hear about the damage. We are not going to hear about BP or Halliburton or Transocean. None of that is ever going to come before this Committee. That is not part of the Republican agenda, you know? They don't want to talk to the CEOs. They are talking here about a semantical difference, a terminological inexactitude, you know, that is built into this discussion that went on at the agency, as though that is the real issue, rather than this historic crime against the environment that was committed here in the country.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Louisiana, Mr. Landry.

Mr. LANDRY. I mean, if there is any Member here who has had constituents affected by the moratorium—because we have many here who have been affected by the spill—but if there has been anyone who has been affected by the moratorium, it is my constituents. It is the constituents that I serve.

And you hear a lot about, "Well, there were no lay-offs, and there are a lot more rigs in the Gulf." The reasons that there were not as many lay-offs as you would think is because people down in South Louisiana, they are not lazy. They don't want the government for anything but to get off their back.

And so, when you kill their jobs in the Gulf of Mexico, they have to leave their families and they have to travel to Africa, to the North Sea, to Montana. Because they know one thing is that the country they grew up in, it is God, family, and work. OK? So they don't sit there waiting for the government to give them a check or to feel sorry for them, they go to work, and they leave. But it is sad when they have to go to Africa, instead of working the Gulf of Mexico.

And I don't understand. Are you an investigative branch, or are you a policy-making branch?

Ms. KENDALL. We are an audit and investigative branch.

Mr. LANDRY. OK. Because if I close my eyes, when I listen to you answer the questions from Members of the other side, I could swear you are petitioning to become the Secretary, because your answers are all about policy. They are not about investigation.

We had a gentleman ask you whether or not you felt that the safety standards that the private industry was implementing were enough. That is not your scope. And then just now you answered and talked about how proud you were of the work that was done from moving from MMS to BOEM to BSEE. That is not your job, either.

And so, unfortunately, I believe that your testimony today has impeached you, has impeached your character. Because earlier you said that, sure, that, you know, you are interested in the job of the Inspector General, because you are an interim, and you need the President to appoint you if you want to get to that job.

Why simply did you not just say, “You know what? I am interested in taking this job, Mr. President. Maybe you should appoint someone in the interim, while I go out and I lobby for that job?” Then there would have been—I mean, I am sure you are a bright lawyer. There would have been no question. This Committee would not have to question your character or your actions.

Why didn’t you just step aside, and say, “Look, I want to run for this job. I want to apply for this job. And let’s appoint another interim who will have no bias as to whether or not they want the job or not.” Why didn’t you do that?

Ms. KENDALL. When I was asked to become Acting Inspector General, Earl Devaney, the Inspector General at the time, asked me to take over his role when he went to the Recovery and Oversight Board. At the time, I wasn’t thinking about becoming the IG. I didn’t know what was going to happen with Mr. Devaney’s appointment to the Recovery Act board. And it was the natural—

Mr. LANDRY. Progression. It was the natural progression. Well, but there comes a point in time—as a lawyer you know that well, that there becomes a question of conflict of interest.

Now, let me ask you a question. If someone inside the Department intentionally causes irreparable harm to an industry, is there a criminal statute that you can use to go after that person? If they intentionally cause harm on an industry, do you know of a criminal statute that we could use to go after them?

Ms. KENDALL. I am not—I don’t know if there is a criminal statute for that.

Mr. LANDRY. Do you think we should have one?

Ms. KENDALL. Intentional harm by itself may be a criminal violation.

Mr. LANDRY. Well, I see an email. There is an email here that—from the case manager, which says—and I read—“Salazar’s statement that our ROI concludes it was a mistake and unintentional is a clear attempt to spin our report. I truly believe that editing was intentional.”

Now, this isn’t about a pause. Because the American Academy of Science, they said, “Look, a 30-day pause certainly would have been sufficient.” A 6 month one they did not stand by.

So, would you say that anyone who intentionally altered the document caused irreparable harm to an industry?

Ms. KENDALL. Well, let me just be clear that that was the case agent’s opinion. The evidence did not support that opinion.

Mr. LANDRY. But that is why we are here today, because no one will give us the rest of the evidence.

Ms. KENDALL. I understand that.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from New Mexico, Mr. Luján.

Mr. LUJÁN. Thank you very much, Mr. Chairman. And, Inspector General, I, for one, appreciate the character you are showing today, with the type of questioning that you are having to go through. I

think words matter. That is why we are here today. Because the change of a word is what elicited today's conversation. And when we tell you that you have impeached your own character today, I am sorry. I am sorry that was said. Because words matter.

And because words matter, I have a dictionary here. I have Webster's New Dictionary of Synonyms. Anyone is welcome to borrow it. As a matter of fact, I have added tabs to save everybody time, where "pause" and "moratorium" are in here. They are here for anyone to use. They are in the Minority's books. But I think that if we found these same books, the same editions in the Majority's offices, they would read the same thing. I would hope they would.

And maybe we should subpoena whoever is working for Mr. Webster to ask him why they defined "pause" the way they did, why they defined "moratorium" the way they did, to get to the bottom of this.

What we should be talking about today and in the future is the moral question. Eleven people's lives were taken. Is that your understanding, Inspector General?

Ms. KENDALL. Yes, sir.

Mr. LUJÁN. Do you know how many gallons of oil were spilled in the Gulf?

Ms. KENDALL. I don't know. It was in the millions.

Mr. LUJÁN. I think the numbers I have here somewhere are 4 million.

Look, if there wasn't a spill, we wouldn't be here today. If the blow-out preventer had worked, we wouldn't be here today. If that hadn't failed, we hadn't lost 11 lives, 11 fathers, 11 brothers, 11 sons—that is a catastrophic event.

And, Mr. Chairman, I know sometimes when we are trying to get to the bottom of something, words matter. But why are we here?

And when the President asked for the 30-Day Report to be compiled and put together in 30 days, given the magnitude of what was talked about here, I think we all wanted to get to the bottom of this. There is not a one of us that did not want to know what happened, and not a one of us that didn't want to plug that, and make sure that not another drop of oil got out, make sure that not another one life was put in danger. We all wanted that. And I appreciated that congeniality that we all had during that time.

So, I hope that that is where we can concentrate some of our efforts, and see what we can do to get to the bottom of this, as well.

Now, Inspector General, one of the gentlemen from Texas today asked you earlier why you didn't investigate Mr. Larrabee for praising you to your face while criticizing your work to others. If you had investigated Mr. Larrabee, wouldn't some people, including maybe some on the Committee, attack you for retaliating against Mr. Larrabee? In other words, are you in a Catch-22 with having to respond to this?

Ms. KENDALL. Well, I certainly feel that if we were to investigate Mr. Larrabee, there would be repercussions from this Committee, yes.

Mr. LUJÁN. Well, I appreciate that, Inspector General. And you know, Mr. Chairman, before I yield back, again, words matter. And I know sometimes the words we use matter. The words we use in debate matter. The words that we use to describe our friends or

those that we don't agree with necessarily matter. I just hope that we truly understand the magnitude of words sometimes with the kind of work that people are putting forward to sacrifice for themselves.

And so, with that, Mr. Chairman, I am not sure if the Ranking Member needs any time, but with that I would yield back, Mr. Chairman. Thank you.

The CHAIRMAN. I thank the gentleman. He yields back his time. The Chair recognizes the gentleman from South Carolina, Mr. Duncan.

Mr. DUNCAN OF SOUTH CAROLINA. Thank you, Mr. Chairman. The question has been asked. Why are we here today? We are here today because an Executive Summary, part of a 30-Day Report led to the detrimental effect on lives.

The gentleman from Louisiana talks about the impact on his State and the people that are creating jobs or working those jobs providing for their family, they now have to go other places for employment. The 30-Day Report that led to the moratorium that kept our Nation from being able to meet its own energy needs.

Why are we here today? One day after his inauguration, President Obama promised a new era of openness in government. "We will work together"—I quote, his words—"We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration." He wrote in one of his first memos to the Federal agencies, he said, "Openness will strengthen our democracy and promote efficiency and effectiveness in government."

But, Ms. Kendall, I look at your written statement, and you say that this is "a unilateral approach to investigate me by requesting select documents from the Office of the Inspector General, drawing conclusions from those documents without all the facts." No. We subpoenaed you and your agency because we want the facts. We are asking for the facts. And we can make and draw our own conclusions from the documents and those facts. That is what we are trying to do today.

That is what we are trying to do today, is get to the bottom of what led to this moratorium that affect lives in Louisiana and all along the Gulf Coast, and affected the lives of people in my district and South Carolina that are paying higher gasoline prices today to drive to and from work. That is what this meeting is about here today. And I appreciate the Chairman holding this hearing.

The gentleman from Florida was really delving into something before he ran out of time. So, Mr. Chairman, I will yield the balance of my time to Mr. Southerland from Florida.

Mr. SOUTHERLAND. I think that—I would like to thank the gentleman from South Carolina for yielding me time. I know that I was asking you questions regarding emails before we went to the Floor to vote. And I had asked you about providing for us IG policies and guidance. At one time you said that you weren't aware of those, and then you said you were aware of those, but you were going to find those for us, if they do exist, and provide those for us.

I was going toward, really, I think a more important issue, really relating to your desire to move forward. You had claimed that you

were seeking the opportunity, perhaps, of a more permanent position. And I think what we see here is, throughout the testimony today, that it has been—it—you either know what is going on through many of your answers and you have not perhaps answered those in a way that I find acceptable, or you are not aware—and I think perhaps could be the case—of policy. Or, you are not aware of things that have been referred or not referred to the Attorney General. You don't have memory, and then you come back and say, "Oh, I do now remember."

I mean, I am bothered by the fact that you may not seem to be on top of these issues.

Ms. KENDALL. Well, let me just say that I have a very, very talented staff that takes care of—for instance, the case review group, who reviews all of the allegations that come to the Office of Inspector General. I do not personally participate in that group. I do not personally decide what should be or should not be investigated, unless it is brought to my attention.

So, no, you are right, I don't know everything that is going on in terms of referrals or investigations. Once they are investigations, however, I do know about them, because I am briefed regularly by a very competent staff that—

Mr. SOUTHERLAND. But you claim that there had been zero referrals made to the Attorney General in the last 3 years.

Ms. KENDALL. I said I don't—I think that is—no. When you said zero referrals—for ethics violations.

Mr. SOUTHERLAND. OK.

Ms. KENDALL. We have made many referrals.

Mr. SOUTHERLAND. OK, OK, all right. Well, I apologize if I misunderstood. OK. So zero referrals for ethics violations.

Ms. KENDALL. As far as I know.

Mr. SOUTHERLAND. OK. But do you get a report on those? Do they—I mean, I am assuming you have weekly staff meetings and your team is communicating with you on investigations and ethics probes and, I mean—

Ms. KENDALL. Yes, I do.

Mr. SOUTHERLAND. OK, OK. I would like to thank the gentleman from South Carolina, and I yield back.

The CHAIRMAN. The gentleman yields back. There has been interest in having another round. I think that that interest should be observed. And so, we will start another round. And I just have a few questions, and I will recognize myself.

First of all, let's establish, again, what this is all about. The BP spill was in deep water. That was in deep water. The moratorium was in shallow water. And the consequences of the moratorium had a huge effect on the economy and individuals' lives. So let's make sure that that distinction is made.

Now, I want to ask you, Ms. Kendall. You mention that you had no jurisdiction—and I agree—with the White House. That is correct?

Ms. KENDALL. Yes.

The CHAIRMAN. Is there anything that prevents you from asking a question of the White House?

Ms. KENDALL. I don't think it would prevent me from asking a question.

The CHAIRMAN. Well——

Ms. KENDALL. But——

The CHAIRMAN. If it didn't prevent you, and you acknowledged that the edit happened in the White House, logic would suggest that you would ask the White House why, and they would make the determination whether they should answer or not.

Ms. KENDALL. Well, no, sir. I did not, for instance, go knock on the White House's door to ask a question. I inquired of the Deputy Secretary, who is in regular contact with the White House, saying it would be helpful for us——

The CHAIRMAN. Well, wait. Now, you are independent. Why would you have to go through the Deputy Secretary? You are an independent inspector. If you thought that it was important—and clearly the evidence said there, because you said it was decided in—why didn't you just ask? Why did you have to ask permission to ask?

Ms. KENDALL. I didn't ask permission to ask, sir. We do not——

The CHAIRMAN. Well, why did you even go through the political appointee to make that inquiry? I mean, nothing prevents you from asking the question. Why didn't you ask? Why wasn't it asked?

Ms. KENDALL. That was the decision I made at the time, sir.

The CHAIRMAN. OK.

Ms. KENDALL. Again——

The CHAIRMAN. All right, that is fine. I respectfully think that was the wrong decision.

Let me ask this. Do you think that the 30-Day Report was a policy document?

Ms. KENDALL. I am almost embarrassed to say this, sir, but I have never read the 30-Day Report.

The CHAIRMAN. Well, do you think the 30-Day Report was a policy document?

Ms. KENDALL. I think the 30-Day Report was much like OIG reports, which contain recommendations——

The CHAIRMAN. Wait. Now, if you can't say that it was not a policy document, do you think the moratorium was a policy?

Ms. KENDALL. I think the moratorium decision was a policy decision.

The CHAIRMAN. OK. Now, if the 30-Day Report drives to the moratorium, would it not suggest that the 30-Day Report was a policy document?

Ms. KENDALL. The 30-Day Report did not contain the moratorium recommendation.

The CHAIRMAN. It came from that document.

Ms. KENDALL. I don't know that, sir.

The CHAIRMAN. You don't know that?

Ms. KENDALL. I don't. I don't know where the moratorium decision came from. I was not part of the 30-Day Report——

The CHAIRMAN. If it——

Ms. KENDALL [continuing]. Or that decision.

The CHAIRMAN. Well, it came from the 30-Day document. And your own report suggests that it came because of editing from the White House.

Ms. KENDALL. We——

The CHAIRMAN. But you—Ms. Kendall, I find it hard to believe that you can say or suggest or agree that the moratorium was a policy decision, yet you can't say that the 30-Day Report which led to the moratorium was a policy document. I find that hard to believe.

Ms. KENDALL. I can't say what the 30-Day Report was, or that it led to the moratorium. I have already said——

The CHAIRMAN. You—so you——

Ms. KENDALL [continuing]. That I did not read the 30-Day Report, and I know that the moratorium recommendation was contained only in the Executive Summary.

The CHAIRMAN. Based on that report. I mean, the deadline, and the reason this came in the middle of the night, was because of the 30-day deadline of the 30-Day Report. And you are saying—well, I have some real problems understanding your logic on that. And I said that in my opening statement. And, frankly, that has been confirmed to me.

I will yield the balance of my time to Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. And thank you for being here. In a May 23rd article this year in USA Today, you are quoted as saying, "I was an active listener. I was not an active participant in these meetings." Is that a correct quote?

Ms. KENDALL. Yes, it is.

Mr. LAMBORN. OK. What is the difference between an active listener and an active participant?

Ms. KENDALL. My distinction here is I did not ask any questions in these meetings. I was there to hear what was being said, to learn as much as I could about deepwater drilling and the things that attend to it so that I could inform myself, as a member of the Safety Oversight Board, and lead the team that we had conducting the Outer Continental Shelf evaluation.

Mr. LAMBORN. So you were an active listener.

Ms. KENDALL. Yes, sir.

Mr. LAMBORN. But not an active participant.

Ms. KENDALL. No, sir.

Mr. LAMBORN. OK. And in the law I think that is called a distinction without a difference, at least in my opinion.

OK. Exhibit number nine, which——

The CHAIRMAN. The time of the gentleman has expired.

Mr. LAMBORN. Thank you.

The CHAIRMAN. All right. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. The Majority has claimed that the economic impacts of the 6-month moratorium were worse than the economic impacts of the spill itself, worse than the impacts of the worst environmental disaster in American history.

But the reality is there were not significant lay-offs in the oil industry from the moratorium. And now, why is that, you might ask. Why weren't there significant lay-offs? Well, it is because President Obama secured \$20 billion from BP to aid the Gulf and its people. Because President Obama got BP to put up \$100 million specifically to aid any oil rig workers affected. Because that \$100 million was expanded to help any oil service and support companies. And

it was because the oil companies knew that drilling in the Gulf would resume in a safer manner under President Obama. That is the reason why we now have 50 percent more floating rigs working in the Gulf of Mexico than before the spill. These rigs did not leave. These rigs kept their employees. Those employees were compensated by the fund that President Obama extracted from BP.

And, despite what the Majority may claim, these are the facts. President Obama and Secretary Salazar took action to protect the workers. That is what they did. The Gulf had to be protected. That is what President Obama did to minimize the economic harm to the region from the spill, and to ensure that we are drilling again now more safely.

So, the Majority says they just want to get to the bottom of this. They have gotten to the bottom of this. And there is no evidence of wrongdoing. The Majority has gotten the answer. They don't like the answer. Secretary Salazar will sit here, if you ask him. He will tell you he made the decision.

This woman should not be here today. You should have Secretary Salazar here, and he will tell you he made the decision. You should have the CEOs of Halliburton and BP and Transocean sit here. Because what you should be trying to do is get to the bottom of the ocean. You should be trying to find out what happened.

Why were those workers harmed? Why was the environment harmed? Why was the fishing industry harmed? What nerve did those companies have to short-change the safety procedures? So bring them in here, and set them up as examples to let the world know it will never happen again in the United States. We will know you are serious. We will know you want to get to the bottom of the ocean when you have them sitting here.

But we are going to go through the whole 2 years and that is not going to happen. And this woman sits here as, really, just a diversion, a red herring. We might as well put an aquarium out here, you have got so many red herrings floating around. OK? And this woman is just here, unfortunately, as part of your plan to have 149 votes on the House Floor for the oil and gas industry, and none to help wind and solar, to have a vote on the House Floor last year to keep all of the loan guarantees—\$18 billion for nuclear and for coal—and to zero out all of the loan guarantees for wind and solar—and each of you voted for that.

So, you have—Solyndra will be made an example, while the United States and Richmond Corporation will continue to get \$540 billion in a loan guarantee, exactly equal to what Solyndra got, and it is already in junk bond status. When is the Republican Party going to have the hearings on what is really going wrong here?

And this woman, like the solar industry, is just part of not dealing with the real issue, and that is that the oil industry recklessly, indifferently came very close to destroying the livelihoods of people in the Gulf of Mexico. And but for that \$20 billion that President Obama extracted from that industry, there would have been devastation down there.

And so, let's bring them in. Let's bring in Secretary Salazar. He will tell you why he imposed the moratorium. But in the dictionary, the difference between a moratorium and a pause is just temporary inaction, temporary delay. It is the same definition. You want to

fight over that? You do that. But it is, oh, so clear, this innuendo, this attempt to divert, because you don't want to get to the central issues of what this Committee should be all about.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. And could the staff please put exhibit 9 up on the screen?

[Slide shown.]

Mr. LAMBORN. OK. And we talked about this a little bit earlier, Ms. Kendall. It says there, in the red box to the left—this is Steve Black saying in an email dated May 28th, “And thanks for the kind words, Mary, and for your participation in so many of the meetings and interviews leading up to this report.”

Why should we not believe Steve Black when he says that you participated in the process?

Ms. KENDALL. I attended. I did not participate in the process of the 30-Day Report. I did not participate in the development of the Executive Summary. I don't know how many times I can say that. It is just—that is the fact.

Mr. LAMBORN. So Steve Black was not being accurate when he said this?

Ms. KENDALL. He was talking about my attendance at the meetings, yes. And I told him that putting together those meetings was an enormously impressive effort. It was a 30-day effort to get people from industry, scientists, government—

Mr. LAMBORN. OK—

Ms. KENDALL [continuing]. In to talk to us—

Mr. LAMBORN. Excuse me. My time is limited, so we will have to go on. Exhibit 8, please.

[Slide shown.]

Mr. LAMBORN. OK. This is Steve Black again in an email dated May 17th. In the upper box, “Thank you for participating on the call with the NAE-identified experts.” He once again thanks you for participating. Why should we not believe his words?

Ms. KENDALL. He thanks everyone for participating. It is his use of the word “participate”. I listened.

Mr. LAMBORN. You “participated on the call today.”

Ms. KENDALL. I don't—

Mr. LAMBORN. How did he even know you were there on the call?

Ms. KENDALL. I don't even remember this call. I don't know that I participated in this call, quite frankly. But I was probably one of the invitees, and so he thanked the invitees for participating. And I honestly couldn't tell you if I was a part of that call.

Mr. LAMBORN. OK. I am going to switch gears now to the role of the Department to turn over documents when there might be a privilege. If the Department tells you or the IG's office not to disclose documents to Congress, is it the policy of the Inspector General to err on the side of the Department, and to go along with that request without question?

Ms. KENDALL. Not without question, sir. The Committee has requested these documents from the Department itself. And the Department has said that they decline to provide them, because they implicate important executive confidentiality interests. This apparently is a term of art as a precursor to the claim of executive privi-

lege. And the previous Administration used this very phrase in 2007, when the House Committee on Oversight and Government Reform requested documents related to the 2004 death of Army Ranger Pat Tillman.

So, this is a process that I, quite frankly, before this knew nothing about. But it is a longstanding process that goes back, as I understand it, to the Nixon Administration.

Mr. LAMBORN. So in 26 years you hadn't heard about this happening.

Ms. KENDALL. Oh, I have heard about it.

Mr. LAMBORN. OK.

Ms. KENDALL. I have never just been involved in it.

Mr. LAMBORN. OK. Did the Department ever exert executive privilege?

Ms. KENDALL. No. The Department has used this term, which, as I understand it, implicates executive privilege in the process that is a long and complex process that I believe the Committee is engaged with the Department in, and should continue to engage the Department in.

Mr. LAMBORN. Is it not true, Ms. Kendall, that only the President of the United States can exert executive privilege?

Ms. KENDALL. The President himself must assert the privilege, but it is usually done through a department head.

Mr. LAMBORN. Was that done in this case?

Ms. KENDALL. It has not been done yet, no.

Mr. LAMBORN. But you went along with their position and did not disclose the documents to Congress?

Ms. KENDALL. I have explained as best I can to the Committee in my letter, responsive to the subpoena, the reasons why we did not turn over the documents. They are not ours—they are not our documents, the privilege is not ours to assert, and the privilege is not ours to waive.

Mr. LAMBORN. You said in an April 18th letter that promises of confidentiality are needed to ensure that Department officials cooperate with your office. Are you suggesting that if they don't have that promise of confidentiality, that they will not cooperate as much?

Ms. KENDALL. I am suggesting that we might not get these kinds of documents in the future, if we did not abide by that promise of confidentiality.

Mr. LAMBORN. So they needed a promise of confidentiality to work with you? Is that what you are saying?

Ms. KENDALL. No, I am saying in regard to documents like this, I don't believe that if we released these documents we would ever see them again, if we were investigating something. And we would be back before, probably, this Committee saying, "We can't get these documents," and we would all be in the same position as the Committee is right now, relative to the Department. But we would not have had the benefit of seeing the documents ourselves, as the oversight body.

Mr. LAMBORN. OK, thank you for your answers.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Arizona, Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman. You know, the impugning of the witness's character, her truthfulness, in front of the Committee is, as Mr. Luján said, is not the way to be conducting this hearing. And, more importantly, there is no basis for those accusations.

But we are doing all this based on the opinion of a case worker who praised the witness first, and then communicated to other members in the Department whatever concerns he had. And while the Majority wants us to accept this as fact, questioning the witness's character, but the case worker we—the Majority wants the rest of us to believe that that has got to be a pillar of integrity, that there is no hidden political agenda, and that the motives of this case worker is as pure as the driven snow, that the case worker is a bastion of truth, and that is the premise by which we are here today.

Now, I don't want to impugn this case worker's character. I wouldn't do that. But to ask us to proceed on that assumption, I think, is asking a lot.

And, you know, this hearing has kind of been like when I was learning English in school, where we had to get the distinction between, you know, what is a pause, what is a moratorium. That would help us with our diction. And with us understanding what is an active participant, what is an observer. That was English class. This has nothing to do with this hearing.

And the gentleman brought up what is the difference between active observer, active participant. I would suggest that the audience here at this hearing are active observers. I would suggest that the members of the Committee are active participants. I think that is the distinction and that is the difference.

I wanted to ask one question, if I may. Ms. Kendall, according to the safety board report, since 1982 OCS leasing has increased by 200 percent, and oil production has increased by 185 percent. However, staffing resources have decreased by 36 percent since 1983. The independent BP Commission recommended increasing the \$10 million per year the oil and gas industry paid in inspection fees significantly in order to fund Department regulators.

Despite the Majority's attempt to block an increase in the inspection fees charged to offshore oil and gas companies in the appropriations bill for the current fiscal years, the Department was provided with the authority to collect inspection fees up to \$62 million to fund the agency. Yet that authority will expire at the end of the year, unless it is extended.

Do you think we should give the Department permanent authority to collect inspection fees on offshore operators to provide a steady, robust funding stream for offshore regulators?

Because, at the end of all this, we are still dealing with possibly—with the worst environmental catastrophe that this country has seen. And we should not lose sight of that in the English lesson that we are having today, or in the attacks on the witness.

Do you believe that that funding has to be permanent, so that what processes are in place and processes will be in place in terms of staffing and procedures can continue to provide the safety oversight that we need?

Ms. KENDALL. Congressman Grijalva, I am not familiar with that particular authority. But I do know that when the Safety Oversight Board was looking at this issue, there absolutely is a need for more Federal presence, in terms of oversight inspection and enforcement of the regulations that are in place. And if this is one of the vehicles by which that can be done, then I would agree with you, yes.

Mr. GRIJALVA. Thank you. And thank you, Mr. Chairman. I yield back.

Mr. MARKEY. Could I just ask?

Mr. GRIJALVA. I yield to—

Mr. MARKEY. Yes, and I just had one quick question, which is the case agent in one email to OIG colleagues saying that he was dismayed that the final OIG report did not mention requesting interviews with the White House. In fact, his draft that you edited did not include language about interviewing the White House.

You said this before, but I think to underscore it. The case agent was complaining about things that demonstrably did not happen. Is that not true?

Ms. KENDALL. That is correct.

Mr. MARKEY. OK. Thank you for saying it again.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Louisiana, Mr. Landry.

Mr. LANDRY. Ma'am, I know sometimes we find ourselves in precarious situations. So, for the record, there are two things that I think need to be fact-checked. Number one, many of the victims who died, their families came here and begged for that moratorium not to be implemented. I think that is important, because that speaks volumes. Because we like to make victims out of victims out of victims families. There is a reason for it. Number two, no one in the oil and gas industry has access to that \$20 billion fund. That is an incorrect statement by the gentleman from Massachusetts. In fact, they are prohibited, if you are in the oil and gas industry, you are prohibited from taking part in that \$20 billion. And that is a fact.

And I yield the balance of my time to the gentleman from Colorado.

Mr. LAMBORN. Well, I thank the gentleman. Could we show exhibit 1 up on the screen, please?

[Slide shown.]

Mr. LAMBORN. Ms. Kendall, are you aware of this email dated September 17, 2010 from Mr. Delaplaine, General Counsel of the Office of the Inspector General, to Mr. Hardgrove?

Ms. KENDALL. I need to take a look at it, sir. I don't recognize it.

Mr. LAMBORN. Let me quote the highlighted portion there. "However, I did take the opportunity to explain our position that they do not have a valid basis to keep the requested material from us, as it could not fall under the executive privilege doctrine."

And then the email goes on to explain that there was no decision pending for the President to make, as the moratorium decision had already been made. The only issue being discussed was how to word an Executive Summary.

Are you familiar with either this email or the thinking contained in this email?

Ms. KENDALL. I am—at the moment, no. I don’t—I obviously was not a recipient of this email, and I am not sure what this email refers to.

Mr. LAMBORN. What is the role of Mr. Hardgrove?

Ms. KENDALL. Mr. Hardgrove is our Chief of Staff.

Mr. LAMBORN. And does he work for you?

Ms. KENDALL. Yes, he does.

Mr. LAMBORN. So he knew this, apparently.

Ms. KENDALL. Apparently.

Mr. LAMBORN. Did you know this?

Ms. KENDALL. I have told you I don’t know what this email is about.

Mr. LAMBORN. Well, if you look at the highlighted portion, according to Mr. Delaplaine, the position is that they do not have a valid basis to keep the requested material from us, as it could not fall under the executive privilege doctrine.

Ms. KENDALL. I guess what I am saying is I don’t know what the requested material is that he is referring to.

Mr. LAMBORN. I believe it is the 13 documents that are at issue.

Ms. KENDALL. I don’t know that. This was back in 2010. And I don’t believe that the 13 documents had been identified at that point.

Mr. LAMBORN. I believe that these are the Steve Black emails.

Ms. KENDALL. They may be; I don’t know.

Mr. LAMBORN. But are you aware of the doctrine that after a decision has been made, that there is no ability of the Executive Branch to assert executive privilege?

Ms. KENDALL. No, I am not. I don’t know what this email means, quite frankly.

Mr. LAMBORN. Did Mr. Hardgrove ever talk to you about this email, or the contents of it?

Ms. KENDALL. I don’t remember our discussing it, no.

Mr. LAMBORN. Did Mr. Delaplaine ever talk to you about this email or the contents of it?

Ms. KENDALL. You know, we have had so many discussions, I don’t know if he talked to me about this email or the doctrines relating to it. I can’t tell from this email what it is about.

Mr. LAMBORN. Do you agree with this privilege—excuse me, with this explanation of executive privilege? This is the General Counsel of the Office of the Inspector General.

Ms. KENDALL. I don’t think it is talking about executive privilege. Honestly, I am looking at it for the first time, and I am not sure what it is talking about.

Mr. LAMBORN. In parentheses, “There was no decision pending for the President to make, as the moratorium decision had already been made.”

Ms. KENDALL. I see that. Again, I don’t know what documents we are talking about here.

Mr. LAMBORN. We have had access to this for months. Is this the first time you believe that you have seen this?

Ms. KENDALL. Yes. I believe it is the first time I have seen this email.

Mr. LAMBORN. And you don't know the discussion that is going on here about executive privilege and when it ends, once a decision has been made?

Ms. KENDALL. No, I don't know what this is talking about.

Mr. LAMBORN. Thank you. I yield back, Mr. Chairman.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentlelady from Guam, Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. Ms. Kendall, the case agent also wanted to interview Secretary Salazar. But that would be very unusual. Is that correct?

Ms. KENDALL. It would be.

Ms. BORDALLO. Do you know if the Secretary was willing to be interviewed?

Ms. KENDALL. I don't know. But there was no indication that the Secretary had anything to do with the editing of the Executive Summary.

Ms. BORDALLO. I see. Mr. Chairman, I want to follow up a little on what our Ranking Member Markey was commenting on. And I certainly agree that, you know, if we really want to get to the bottom of something like this, we have got to go to the top. We can't keep bringing in people—Ms. Kendall, I admire your composure. You have been sitting here before us being grilled, under fire, since 10:00 this morning. And you know, I don't know. I certainly don't like to see anybody harassed like that.

But I would like to hear from you, Mr. Chairman. Did this Committee—did you ever request testimony from Secretary Salazar? And why aren't we hearing from him?

The CHAIRMAN. Would the gentlelady yield?

Ms. BORDALLO. Yes, I will yield.

The CHAIRMAN. I had a conversation with the Secretary. But if anybody here believes I wouldn't want the Secretary here, then they are sadly mistaken. We had a hearing the week before last. And when I asked the Secretary to come down on the surface mining, and the Secretary did not.

I advised the Secretary that if he wanted to come, he should expect to be open for questions on a number of issues, not only confined to this issue, but other issues because we have subpoenaed him. And there are many, including me, that feels that there has not been a response from the Secretary. And so I advised him. I said that, you know, he could come down, but "be prepared to potentially face questions regarding why you haven't supplied the subpoenas, and potentially issues of maybe going into contempt and why you should not be held in contempt."

Now, that was the conversation I had with the Secretary. That ended that conversation, and there was no other discussion regarding his coming here. But yes, there was a discussion, and it is as I just described to you.

Thank the gentlelady for yielding.

Ms. BORDALLO. So, Mr. Chairman, then what you are saying is that, unofficially, you just had a conversation with him. This wasn't an official request to come before the Committee to be subpoenaed to speak on several issues.

The CHAIRMAN. Will the gentlelady yield?

Ms. BORDALLO. Yes.

The CHAIRMAN. The Secretary offered that suggestion to me, and I responded to him, as I just mentioned, and that was the end of any further discussion on his coming in front of me.

Ms. BORDALLO. Well, I have a comment. I just understood here that we have not issued a subpoena, as you had said, for the Secretary to testify. So it is my understanding that he is willing to appear. So can we call him in?

The CHAIRMAN. Like I said, the conversation that we had and the exchange that we had with the Secretary was that if he wants to come in he should be prepared to have discussions far beyond here, this issue only. It would probably go to the surface mining issue. It would probably go to the issue of why there hasn't been a response to all of the subpoenas that have been issued by this Secretary. And a discussion on whether he would want to face questions that may lead to why he should not be held in contempt.

Now, those are all issues that I suggested to the Secretary when he suggested that he may come forward. I left the conversation at that, and that has been the end of that conversation.

Ms. BORDALLO. Well, as a member of the Committee, I am suggesting that we ask him to appear. He apparently is willing. So if I could make that request.

And, second, we could ask the CEOs of oil companies to appear, as well. Have we done that?

The CHAIRMAN. You know, I find it ironic—if the gentlelady would yield—

Ms. BORDALLO. Yes.

The CHAIRMAN. I find it ironic that that issue keeps coming up. And I will mention to the gentlelady and also other members of the Committee that we have had executives of those companies in front of this Committee, in fact, going back to the last Congress. And in the same vein that while we have maybe not had the presence, although we have, in front of this Committee, we have not gotten the cooperation, I might add, if you compare the information that we received from those companies compared to the information we have gotten from this Administration, there is a huge, huge divide as to what they have provided to us.

So, I thank the gentlelady for yielding.

Ms. BORDALLO. Mr. Chairman, just one quick question here. You said the top people. I am talking about the CEOs.

The CHAIRMAN. Oh, we have had the president of some companies—

Ms. BORDALLO. We have had the CEOs here—

The CHAIRMAN [continuing]. Of companies that have come in here.

Ms. BORDALLO. Well, I suggest, if we really want to get to the bottom of this, that we have another—

The CHAIRMAN. The time of the gentlelady has expired, and I will simply respond to this. The issue here that we are pursuing is because of a moratorium that dealt with shallow water, not deep water, where the BP is. There is a distinction between the two.

The Chair recognizes the gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. I would like to get back to the Klamath Basin for a second. It might not be as visually

graphic, but it is not insignificant. It is the loss of four hydroelectric dams, 155 megawatts of hydroelectricity, loss of a fish hatchery that produces 5 million salmon smolts a year, a billion dollars of taxpayer and ratepayer costs, all driven, we are told, by the best available science.

Now, we spent nearly all 5 minutes allocated to my first round of questioning, Ms. Kendall, with you denying that you knew anything about a complaint by the Bureau of Reclamation's scientific integrity officer, Dr. Paul Houser, documenting intentional falsification of scientific data related to the Klamath Basin all to drive the decision to a predetermined conclusion. In the final seconds of my allotted time, you appeared to have had a recollection when I asked about a scientific integrity case provided on your office's own manifest entitled, "Finkler, Kira, et al."

So, with your memory freshly restored, I would like to know, first and foremost, if we at least now established that the scientific integrity case entitled "Finkler, Kira, et al," status closed, final report not available, listed on your office's manifest, involves the complaint by Dr. Houser.

Ms. KENDALL. I know it involves Dr. Houser. I don't know if it involves his complaint.

Mr. MCCLINTOCK. All right. Then can you tell me what—so the Office of the Inspector General then did know about his complaint. And my next question to you is what did the Inspector General's office do to investigate this most detailed complaint by the scientific integrity officer of the Bureau of Reclamation?

Ms. KENDALL. Congressman, I would have to get back to you on that, because I simply don't know the answer to it.

Mr. MCCLINTOCK. Then you obviously can't tell me what you discovered from that investigation, which is not an insignificant or insubstantial matter.

Ms. Finkler, whose name is on the manifest, was Dr. Houser's boss. When Dr. Houser raised these concerns internally, her response was to fire him. She was an employee of Trout Unlimited, which is an interested party to the Klamath Basin agreement. She did not recuse herself from being involved in these discussions, and in fact, fired the whistle blower hired by the Bureau of Reclamation to ensure the scientific integrity of the data that is driving this entire proposal. Her response was to fire him.

Now, doesn't it strike you as significant that the official who fired Dr. Houser was precisely the same official that he accused of official misconduct in falsifying this data, and who had an obvious and glaring conflict of interest?

Ms. KENDALL. Congressman, I am listening to what you are saying, but it doesn't help me because I really don't know about this case.

Mr. MCCLINTOCK. You are the watch dog. You are responsible for assuring the integrity of the scientific data that is driving these policy proposals.

Ms. KENDALL. Congressman—

Mr. MCCLINTOCK. Why aren't you—why—you know—

Ms. KENDALL. I have many—

Mr. MCCLINTOCK. Where is the outrage?

Ms. KENDALL. I have many people on my staff who work these issues on behalf of the Office of Inspector General. I apologize. I don't know the details about this one.

Mr. MCCLINTOCK. Well, you have got a row of folks behind you. Do any of them know?

Ms. KENDALL. Congressman, we would be glad to get back to you and provide details about this. I simply don't know them today.

Mr. MCCLINTOCK. Well, I will tell you what I would ask for, is all of the documents related to Dr. Houser's complaint. I would like to know why was the case closed. Why is there no report available? I assume you cannot provide me information on any of these questions.

Ms. KENDALL. I don't have the information today, no.

Mr. MCCLINTOCK. Well, Mr. Chairman, I think that this is significant enough, and this omission is glaring enough, to call for a separate hearing on this subject. As I said, it is not an insignificant matter. It has huge fiscal and economic and environmental ramifications for the entire Pacific Northwest. It all hinges on what we are told is the best scientific data when the scientific integrity officer has been blowing a whistle warning us that that data has been deliberately corrupted. And the Inspector General, so far as I can tell at this hearing, has done precisely nothing.

We need to look into this. And we need to look into this before any further activity is taken on the Klamath. And I think that we also ought to get in our possession—

Mr. MARKEY. Mr. Chairman—

Mr. MCCLINTOCK [continuing]. All of the documents—

Mr. MARKEY [continuing]. Parliamentary inquiry.

Mr. MCCLINTOCK [continuing]. Related to—

Mr. MARKEY. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will stage his inquiry.

Mr. MARKEY. Yes. The rules of this Committee, Mr. Chairman, require that members contain their questions to the subject matter of the hearing. Those are the rules of this Committee.

Mr. MCCLINTOCK. Well—

Mr. MARKEY. Did your invitation—Mr. Chairman, parliamentary inquiry—did your invitation, Mr. Chairman, invitation letter to Ms. Kendall, notify her that this Klamath issue would be a topic for today? And, if not, then I would ask that this line of questioning be ruled out of order. Because there is an implication being made by this gentleman that Ms. Kendall is not answering his questions, when she was invited here, under the rules, to answer a whole other set of subject material. And under our rules, she was coming here knowing that other material could not be put before her.

Mr. MCCLINTOCK. Mr. Chairman—

Mr. MARKEY. So I would just ask for a ruling on that.

Mr. MCCLINTOCK. Mr. Chairman?

The CHAIRMAN. The gentleman asked a parliamentary inquiry into whether the gentleman from California's line of questioning was within the scope of this hearing. And I would tell the gentleman from Massachusetts that the title of the hearing is as such: "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior."

And then, the invite letter goes on to talk about the conduct of the Inspector General, and four specifically, independence and effectiveness of the Inspector General in acting capacity, and then five—on the invite letter of the second paragraph—“and other matters”. And the gentleman from California is talking about other matters, so it falls within the scope—

Mr. MCCLINTOCK. Mr. Chairman?

The CHAIRMAN. It falls within the scope of the hearing today.

The gentleman from—

Mr. MARKEY. Mr. Chairman?

Mr. MCCLINTOCK. Mr. Chairman, I would also—because I still had time remaining before the gentleman from Massachusetts interrupted me—point out that the Klamath Basin issue was raised in the Chairman’s letter to Ms. Kendall dated May 30, 2012, and was referred to in her letter back to the Chairman dated July 20th. So this is not unexpected for her. It was raised in the letter. She responded specifically on this issue in the letter back to the Committee, which I have already asked to be entered into the record.

I would suggest the gentleman from Massachusetts read his briefings more carefully before he comes to the hearing.

The CHAIRMAN. The gentleman had some time, and I am anticipating he had approximately 30 seconds left in his time. Does the gentleman yield back?

In response, then, to the Ranking Member, this falls with—the line of questioning from the gentleman from California falls in line with the invitation to the Acting Inspector General.

The Chair recognizes the gentleman from the Northern Marianas.

Mr. SABLAN. Thank you very much, Mr. Chairman. Mr. Chairman, it is going on 4 years that I have served on this Committee there are—you know, we take votes, we have hearings. There are times when I agree with the other side, and there are times when I disagree with my side. And there are times when I take a vote that bears hard on me.

The vote we had yesterday, Mr. Chairman, was, I think, a very difficult one for me, because I wanted to vote no. Because I thought that there was still a chance to have more conversations with the Department of the Interior, rather than issue the subpoena. I also didn’t think yesterday that the extraordinary effort has been exhausted.

And the Chairman knows I have a great deal and healthy respect for him, and I still do. I just—last night, you know, just before I went to bed, thinking about what we did yesterday also, Mr. Chairman, and just couldn’t find comfort that we did that. But we did take a vote. We are issuing subpoenas.

And I would also like very much to bring the Secretary of the Interior here. If we need the answers here, we need the Secretary of the Interior to give us the answers. And I would encourage and urge the Chairman to include the Secretary.

And at this time I yield my remaining time to the Ranking Member, Mr. Markey.

Mr. MARKEY. I thank the gentleman very much. And again, let me just state for the record we have not invited the CEOs of BP, Transocean, or Halliburton to sit here. This is the greatest crime

in the history of America against the environment. Bringing in mid-level officials at these companies is not taking this issue seriously.

So, when you bring in the CEOs of these companies and you are staring them down, you are getting the answers, then it is serious. This is not serious.

Ms. Kendall, Mo Udall, by the way, Mo Udall, the great Chairman of this Committee for so many years, he used to have a saying. He used to say, "Everything has been said, but not everyone has said it."

So, on their side they keep saying the same things over and over again. You keep giving the same answers. And they hate the answers. They just hate these answers, because at this point we still don't have any understanding of what it is that they are saying went wrong. This is executive privilege, it is controlled by the President. Everyone can have an opinion on executive privilege, but the President, the Secretary, they exercise the decision on executive privilege, not you. It is not your decision.

Isn't there a point that you have to ask, you know, again, what is the legal basis for asking questions?

Ms. Kendall, are you familiar with the works of Franz Kafka? Well, in Kafka's "The Trial," a man is charged with a crime without being told the process of the trial, or even what he is being charged with. Ms. Kendall, you seem to be in a similar situation. At this point, I don't even know what you are being attacked for. I still can't figure it out. Is it that you are the IG? Is it the Klamath River Basin hydro project unrelated to this hearing? Is it Secretary Salazar's decision to issue the moratorium? Or is it just that Barack Obama is President, which I suspect is what is at the heart of all of this?

But for you to be sitting here for hour after hour without anything thus far that I can ascertain is something that they can point to you and say that you did wrong, I still am waiting for that sentence to be uttered, other than a McCarthyesque set of questions that are asked without any evidence of anything that has not already been conclusively proven to not be true.

So, this is the essence of what we have here, OK? Those who are guilty, the CEOs of these companies, they are not here. Those who have, really, the responsibility to make the decisions, even at the agency, we can bring in the Secretary. But everything else is just kind of a sideshow. You know? Let's have the real answers. And let's have the real showdown here on what happened in the Gulf of Mexico with the CEOs of these companies. But until you invite those CEOs, this is not a serious investigation at all. And the absence of any specific charges that you can make that make any sense is evidence of that.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Florida, Mr. Southerland.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. Along those lines right there, as far as CEOs—and clearly the Secretary of the Interior is a CEO—the Department issued over 700 citations to the owners and operators of the Macondo Well, Deepwater Horizon. As the Acting IG, could you tell me about the investigation that you

performed, or your department performed on the Department for their inaction after issuing those 700 citations?

Ms. KENDALL. I am not sure what investigation you are talking about.

Mr. SOUTHERLAND. Well, wait a minute. The Department issued 700 citations to the owners—and I want to make sure the Ranking Member catches this, Mr. Chairman—the 700 citations were issued to the owners of the Macondo Well and the Deepwater Horizon from the Department. And I ask you about the investigation into the inaction of—you got a problem. And you are telling me that you are not aware of an investigation, or—

Ms. KENDALL. Well, I am aware of a number of investigations, but I am not aware—

Mr. SOUTHERLAND. No, no, no. I am talking about specifically to the Department for issuing 700 citations and not moving it a step farther, because we are always told that government is here to protect the people.

Ms. KENDALL. And I am telling you I don't know about an investigation about that.

Mr. SOUTHERLAND. Mr. Chairman, I find it absolutely amazing. And the Ranking Member talks about bringing CEOs in here. And, by the way, I asked the CEO of the Department of the Interior last year, Mr. Chairman. I asked him that very question, and was given, you know, absolutely no satisfaction that the Department accepted any responsibility that it failed, after you know you had a problem, that there is no responsibility, no personal responsibility, and no responsibility for the Department.

And now I ask the IG. Certainly after 700 citations were issued, what about the investigation? Clearly, there must have been one. Clearly, there was the—because we have heard today. We have seen Webster's dictionary. And Webster—I will tell you the definition of "incompetence" is lacking the qualities needed for effective action and unable to function properly. The synonyms, according to Webster, "incapable, inept, unfit, unqualified, unable." And yet we have a Department that I think has demonstrated that to perfection—700 citations. And we have an IG department that hasn't even done an investigation on that. That is the very definition, according to Webster.

And so, we have tried. We brought the CEO in here of the Interior, and they have not answered that question. And so there, now we know there is no personal responsibility. And I am amazed that that is not a smoking gun for this body. And I find that I agree. I agree with the Ranking Member. And I am amazed that they are not concerned, because at no point in time when the Secretary of the Interior was here, not one single question from the Minority looking into that issue. And it undermines, really, the validity and the purpose of trying to understand.

So, go to the bottom of the ocean. Well, we have tried to. And, unfortunately, we have—we are—you know, there is—we are not catching anything there. And so I just—I find that there should be more examination. And that is your role, as the IG.

And why would there not be? With my remaining time left, why would there not be? Is that not problematic?

Ms. KENDALL. Because I am not familiar with the 700 citations, I could only speculate. But I would assume that BOEMRE, which was the succeeding agency after MMS was split in two, and either BOEM or BSEE now would be the appropriate body to conduct such an investigation, or conduct an internal investigation. And actually, I believe BSEE is actually doing that, as we speak.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman for yielding back. I want to conclude this hearing by thanking you, Ms. Kendall, for being here. I know it was difficult. But we that sit on this panel, because of what we have chosen to do, find situations sometimes that are difficult, also. But that comes with the responsibility of self-government. You are in a position of a great deal of importance. As I mentioned in my opening statement, I have some questions and certainly members of this Committee have questions about the independence which led to a decision that did cause economic harm. And nobody disputes that.

Nobody disputes the fact that the initial incident caused economic harm. But we do think it is important that the people get the facts. And the simple fact that the Executive Summary caused such an immediate backlash from the peer review group, where in some cases they felt that they were being used, I think is very important that we get to the bottom of why this happened.

And that is what we are trying to ascertain. Whether you like it or not, you were caught in that discussion. And I think—as I have said several times—that independence was somewhat compromised is something that this Committee needed to look into. And that was the reason for this hearing.

I am not sure that we have gotten all the answers. I certainly have some questions in my mind. But I do very much appreciate your participation. And the only thing that I could offer you is that those of us probably at some time in our political lives have faced similar situations that you have, and so there is empathy from us to you. But recognize that that responsibility, it is part of your job. And that is part of self-government. That is what makes it difficult.

So, if there is no more business coming before the Committee, the Committee will stand adjourned.

[Whereupon, at 1:12 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[A memorandum submitted for the record by Dr. Paul R. Houser, Bureau of Reclamation, U.S. Department of the Interior, follows:]

DATE: February 24, 2012
 TO: Office of the Executive Secretariat and Regulatory Affairs
 Department of the Interior, 1849 C Street, N.W., Mail Stop 7328
 Washington, DC 20240
 FROM: Dr. Paul R. Houser
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 Scientific Integrity Officer, Bureau of Reclamation, Washington D.C.
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SUBJECT: Allegation of scientific and scholarly misconduct and reprisal for a disclosure concerning the biased summarization of key scientific conclusions for the Klamath River dam removal Secretarial determination process.

SUMMARY: With this letter, I submit two allegations of scientific and scholarly misconduct and reprisal intended to compromise scientific integrity for a disclosure concerning the Department of the Interior's biased (falsification) summarization of key scientific conclusions for the Klamath River dam removal Secretarial determination process. These allegations violate different parts of the 305 DM 3 Scientific Integrity Policy, but are being submitted together, as their possible motivation and topics are related. In my role as Science Advisor and Scientific Integrity Officer for the Bureau of Reclamation, I provide my comments at various points during this presentation.

1. *Intentional Falsification:* Motivated by Secretary Salazar's publically stated 2009 intention to issue a Secretarial determination in favor of removing four dams on the Klamath River (due on March 31, 2012), the Department of the Interior has followed a course of action to construct support for such an outcome. An example of this intentional biased (falsification) reporting of scientific results is contained in the September 21, 2011 "*Summary of Key Conclusions: Draft EIS/EIR and Related Scientific/Technical Reports*" [attachment 1]. Other examples provided by third parties are provided in the attached documents.
 - a. Person(s) alleged to have committed misconduct:
 - i. Unreported author(s) of report "*Summary of Key Conclusions: Draft EIS/EIR and Related Scientific/Technical Reports*"
 - ii. Department of the Interior officials
- 2) *Intentionally circumventing policy that ensures the integrity of science and scholarship, and actions that compromise scientific and scholarly integrity:* On September 15, 2011, I expressed concern via written disclosure relating to the scientific integrity of a draft press release on the draft environmental analysis for removing four Klamath River dams [attachments 2,3], and via verbal disclosure about the integrity of the larger Klamath River dam removal Secretarial determination

PacifiCorp's Klamath Hydroelectric Project 2082 (inclusive of the J.C. Boyle, Copco 1, Copco 2, and Iron Gate dams) led willing basin stakeholders to come to agreement on the Klamath Hydroelectric Settlement Agreement (KHSA) and the Klamath Basin Restoration Agreement (KBRA).

The KHSA is a multi-party agreement that, if fully implemented, would result in the removal of the Four Facilities within the Klamath Hydroelectric Project. Signatories of the KHSA, with the exception of the Federal government and PacifiCorp, also signed the KBRA. The Federal government is not able to sign the KBRA until Congress passes Federal legislation authorizing the agreement. The KBRA includes interrelated plans and programs intended to benefit fisheries throughout the basin, water and power users in the upper basin, counties, Indian tribes and basin communities. KBRA fisheries programs include extensive habitat restoration, improvements to water flow and quality, and a fish reintroduction program in the upper basin. Full implementation of the KBRA requires an affirmative Secretarial determination on the removal of the four dams, and will likely cost taxpayers and ratepayers in excess of \$1B to implement.

Department of the Interior Scientific Integrity Policy:

The Department's Manual (305 DM 3) defines scientific and scholarly misconduct as:

- (1) Fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and scholarly activities, or in the products or reporting of the results of these activities. (Federal Policy on Research Misconduct, 65 FR 76260–76264, December 6, 2000.) Misconduct also includes: (a) intentionally circumventing policy that ensures the integrity of science and scholarship, and (b) actions that compromise scientific and scholarly integrity. Scientific and scholarly misconduct does not include honest error or differences of opinion.
- (2) Fabrication, falsification, or plagiarism in the application of scientific and scholarly information to decision making, policy formulation, or preparation of materials for public information activities.
- (3) A finding of scientific and scholarly misconduct requires that:
 - a. There be a significant departure from accepted practices of the relevant scientific and scholarly community.
 - b. The misconduct be committed intentionally, knowingly, or recklessly
 - c. The allegation be proven by a preponderance of evidence.

305 DM 3 indicates that scientific misconduct must be an intentional and significant departure from accepted practices of scientific community that is proven by evidence, such as intentional fabrication, falsification or plagiarism, or actions that intentionally circumvent or compromise the policy.

ALLEGATION I: *Intentional Falsification:* Motivated by Secretary Salazar's publically stated intention to issue a Secretarial determination in favor of removing four dams on the Klamath River (due on March 31, 2012), the Department of the Interior has likely followed a course of action to construct such an outcome. In 2009, Secretary Salazar stated that the proposal to remove the Klamath River dams "*will not fail*", and on September 19, 2011, Ms. Kira Finkler, Deputy Commissioner for External and Intergovernmental Affairs, told me directly that "the Secretary wants to remove those dams". This intention has motivated Department of the Interior officials to "spin" or incompletely report the scientific results towards a more optimistic scientific story that supports dam removal.

An example of this intentional falsification is contained in the September 21, 2011 "*Summary of Key Conclusions: Draft EIS/EIR and Related Scientific/Technical Reports*" [attachment 1]. This summary intentionally distorts and generally presents a biased view of the Klamath River dam removal benefits. It intends to present only the positive, without the uncertainties or negatives. This is ascertained by

Other examples of science integrity issues provided by third parties are provided in attached documents. These examples should also be considered when evaluating the scientific integrity of the Klamath River dam removal Secretarial decision process.

- 1) February 7, 2012 Siskiyou County notice of intent to file suit [attachment 5],
- 2) January 31, 2012 Siskiyou County comments on report [attachment 6],
- 3) July 12, 2011 Siskiyou County KBRA and KHSAs letter [attachment 7].
- 4) November 11, 2011 Letter from Tom Connick [attachment 28],
- 5) July 21, 2011 Science, Secrecy and Salmon Restoration [attachment 29],
- 6) December 27, 2011 *Klamath dams: County's comments in* by John Bowman, Siskiyou Daily News, December 27, 2011 [attachment 30],

ALLEGATION II: *Intentionally circumventing policy that ensures the integrity of science and scholarship, and actions that compromise scientific and scholarly integrity.*

305 DM 3 establishes a scientific code of conduct (section 3.7). Specifically, for all Departmental employees, volunteers, contractors, cooperators, partners, permittees, leasees and grantees, the code requires communication of the results of scientific and scholarly activities clearly, honestly, objectively, thoroughly, accurately, and in a timely manner (3.7.A.2), not intentionally hindering the scientific and scholarly activities of others (3.7. A.6), and clearly differentiating among facts, personal opinions, assumptions, hypotheses, and professional judgment in reporting the results of scientific and scholarly activities and characterizing associated uncertainties in using those results for decision making, and in representing those results to other scientists, decision makers, and the public (3.7.A.7). Additionally for scientists and scholars, the code requires providing constructive, objective, and professionally valid peer review of the work of others, free of any personal or professional jealousy, competition, non-scientific disagreement, or conflict of interest (3.7.B.6). And finally, for decision makers, the code requires supporting the scientific and scholarly activities of others and not to engage in dishonesty, fraud, misrepresentation, coercive manipulation, censorship, or other misconduct that alters the content, veracity, or meaning or that may affect the planning, conduct, reporting, or application of scientific and scholarly activities (3.7.C.1), and to adhere to appropriate standards for reporting, documenting and applying results of scientific and scholarly activities used in decision making (3.7.C.3).

On September 15, 2011, I expressed concern via written disclosure relating to the scientific integrity of a draft press release on the draft environmental analysis for removing four Klamath River dams, and via verbal disclosure about the integrity of the larger Klamath River dam removal Secretarial determination process. My disclosure was never directly addressed, and supervisors have enacted and used 1-year probationary status to enact reprisal culminating in the termination of my employment (effective February 24, 2011). The details leading to the termination show a pattern of hindering and not being supportive or honest about the scientific integrity process; the details themselves are not the scientific integrity issue but are rather a case of subsequent reprisal that show intentional actions that compromise the scientific and scholarly integrity codes called out above. Below I outline the actual disclosure, and subsequent reprisal, with critical uncertainties and caveats, so that the Secretarial determination can be made without scientific bias. This Klamath dam removal Secretarial determination is reported to have a cost to the public (taxpayers

and ratepayers) in excess of \$1B, so a misinformed or premeditated decision could be a gross waste of funds.

Direct Response to Disclosure:

I received no direct response or follow-up on my disclosure from Mr. Fletcher or Mr. Carter. However, the tone and bias of the final press release scientific reporting was improved, and the title was changed [attachments 1, 2, and 3]. My specific disclosure comments, which primarily addressed issues with the *Attachment: Summary of the major findings and a schedule for public hearings*, were not addressed in the final release.

When my supervisor, Ms. Finkler, returned to the office on September 19, 2011, I discussed the issue with her, and she expressed concern that I chose to document the disclosure via Email. She cited concerns about creating discoverable records that could be subject to FOIA for this contentious issue, and pointed out to me that that “the Secretary wants to remove those dams”. In subsequent discussions with Ms. Finkler on this issue, she told me that she thought the press release and related materials were unbiased, but she also conceded that she had not reviewed the underlying documents, including the expert panel reports.

Reprisal for Disclosure:

Following my disclosure related to the Klamath Dam Press release [attachment 10], I faced systematic reprisal on several fronts. These include, enacting and using a 1-year probationary period to issue threats of termination, issuing a low performance rating, denying travel, denying training and executive development, denying mentoring, and termination of my position.

Performance Appraisal: On October 27, 2011, my supervisor, Ms. Finkler, presented me with a minimally successful performance rating. She invited Mr. David Murillo, Reclamation Deputy Commissioner for Operations to the meeting as a witness. Areas identified as being below fully successful were as follows [attachment 12]:

- 1) Needs to pay closer attention to detail when submitting a written product. For example, he submitted a memo to the Commissioner that still was labeled “draft” and had no date on it. He also needs to work on his writing—he needs to take the time to review the substance of his written products more carefully, organize information in a logical way and make the final product easy to read.
- 2) Needs to make sure he responds in a timely way to requests from me and follows directions.
- 3) Needs to work on contributing to a positive workplace that supports the organization’s missions and goals.
- 4) Needs to better engage in strategic planning, for example, he needs to proactively suggest ways he can add value to various priorities rather than waiting for instructions.
- 5) Needs to work on using sound judgment to make effective decisions, for example, he should not assume, and take action on such assumption, that his input has been ignored prior to knowing the final decision.

The review involved extensive discussion of my September 15, 2011 disclosure, and was clearly the subject of performance items 2, 3 and 5. On point 2) Ms. Finkler felt that I did not follow Mr. Fletcher’s directions (to not send him my disclosure in Email), when I chose to Email the disclosure to Ms. Finkler. I had intentionally decided to Email the disclosure to Ms. Finkler to make sure that the situation was properly documented and transparent. On point 3), Ms. Finkler felt that my disclosure actions were not in support of the organization’s mission and goals (i.e. Secretary Salazar’s desire to remove the four Klamath River dams). Also, she felt that my disclosure did not contribute to a positive workplace and showed that I was

It is quite clear that at the time of the disclosure, my supervisor decided to restrict access to travel, in an apparent attempt to reduce my effectiveness, which would further her goal of using the probationary period to terminate my position.

Training: On November 29, 2011 I finalized a standard Executive Professional Development plan [attachment 22], which was focused on the learning and improvement goals outlined in my performance review [attachment 12]. This plan was carefully developed in close coordination with Ms. Norma Martinez, Reclamation’s Learning Officer. Ms. Finkler signed the plan without even reading or discussing its details. I presented a plan for implementing this training to Ms. Finkler on January 11 [attachment 23], which she said she would review later, but then disapproved at a subsequent meeting, citing budget concerns. By denying training in the very areas that were cited for needing improvement in my performance plan, Ms. Finkler further undermined my success. This action further illustrates that Ms.

Finkler did not intend to give me an opportunity for improvement, having decided at the time of disclosure to proceed towards termination.

Mentoring: Based on the establishment of a probationary period for my position on September 29, 2011 [attachment 15], and Ms. Finkler's offer of "*assistance which will better enable you to meet the requirements of the position*" in the November 10, 2011 letter of concern [attachment 17], on November 10, 2011, I requested that Ms. Finkler provide me written guidance on how she would evaluate success in my probationary period. Ms. Finkler indicated that she had given me all the guidance I needed in the letter of concern. In summary, the letter of concern essentially says that *one more incident of using poor judgment or failing to listen and follow directions will result in termination during the probationary period*,

Between the November 10, 2011 and January 24, 2012, I met with Ms. Finkler seven times at regularly scheduled weekly check-in meetings (11/15/11, 11/23/11, 11/29/11, 12/6/11, 1/11/12, 1/18/12, and 1/24/12). At each meeting I asked Ms. Finkler how I was performing, and each time she said "you are doing OK". I also asked at each meeting how I can improve, and she always replied that she could not think of anything.

Further, to better engage in strategic planning, and proactively suggest ways that I could add value to various priorities (as pointed out in my performance review), I presented Ms. Finkler with seven proposals ranging from ways to engage in California Water [attachment 24] to FY14 budget proposals [attachment 25], Ms. Finkler took the proposals, but never offered discussion, feedback or decisions to proceed. At a meeting in early November 2011, she told me that the "*ball was in her court*" with respect to the California Water proposal [attachment 24], and later in November 2011 she told me that she did not trust me to act on the California water ideas.

It is clear that since the time of the disclosure (September 15, 2011), Ms. Finkler's intention has been to use my probation status to terminate my position. She has not offered genuine mentoring or guidance, and has not made decisions regarding my proactive strategic planning suggestions.

Termination: On February 8, 2012, Ms. Finkler informed me that my expertise and skills were not a good match for the science advisor position [attachment 26], and gave me until February 10, 2012 to resign or be terminated. There was no specific incident cited for the action, and the termination did not result from *using poor judgment or failing to listen and follow directions*, as was her guidance in the letter of concern [attachment 17]. On February 10, 2012, I decided to let the position be terminated because I firmly believe the evidence points to it being the direct result and the ultimate reprisal for the September 15, 2011 disclosure. The timing of the termination, being just one month before the Klamath Secretarial Determination, suggests that my supervisors did not want me included in the decision process; for fear that I would make another disclosure that does not support the Department's goal to remove the dams. interest. However, conflicts can occur for other reasons, such as personal relationships, academic competition, and intellectual passion.

I attest that I have no fiduciary ties or conflicts associated with the Klamath River Secretarial decision process. I do not have any financial relationships with Klamath River associated industry, employment, consultancies, stock ownership, honoraria, expert testimony, either directly or through immediate family. I am not an author of any reports or the recipient of any research support associated with the Klamath River. However, I do have personal impact (loss of job) associated with accusation II, but have nothing to directly gain or lose from the potential result of this accusation. I also plan to submit an appeal for whistleblower protection with the Merit System Protection Board (MSPB), and with the Office of Special Council (OSC). My motivation for submitting this allegation is to uphold the principles of scientific integrity and its code of conduct, as is my responsibility as a practicing research scientist.

Cordially,

Dr. Paul R. Houser
 Science Advisor & Scientific Integrity Officer
 Bureau of Reclamation,
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 Associate Professor, George Mason University, Fairfax, VA

