

Subcommittee on Oversight and Investigations

Louie Gohmert, Chairman

Hearing Memorandum

June 21, 2016

To: All, Subcommittee on Oversight and Investigations Members

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

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

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

Policy Overview:

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

Invited Witnesses:

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

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

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

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

Background:

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

Recent Committee Activity

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

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

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

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

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

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

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

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

Further Concerning OIG Releases/Findings

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

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

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

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

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

- OIG found evidence of a long-term pattern of sexual harassment, involving over 80 victims, at the Grand Canyon River District. Superintendent David Uberuaga was aware of the sexual harassment and failed to follow DOI procedures regarding management of such incidents. Prior to his appointment as Superintendent of the Grand Canyon, Mr. Uberuaga had already been the subject of an OIG investigation regarding the illegal sale of his property while he was stationed at Mount Rainier National Park.¹⁰

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

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

Relationship between DOJ and OIG

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

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

DOJ can, and does, decline to prosecute cases, even when it has been involved in the investigation and even when its involvement limits the ability of OIG to present information to the Department. For example, though it had participated in the Abbey investigation, DOJ declined to prosecute.

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

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

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

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

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