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

May 16, 2013

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DEMOCRATIC STAFF DIRECTOR

The Honorable Daniel M. Ashe
Director
U.S. Fish & Wildlife Service
1849 C Street, NW
Washington, DC 20240

Dear Director Ashe:

The Committee on Natural Resources (“Committee”) has broad jurisdiction over matters involving the Department of the Interior, energy development on federal lands, wildlife, and migratory birds.

In order to better understand the Obama Administration’s enforcement of the Migratory Bird Treaty Act (“MBTA”) and the Bald and Golden Eagle Protection Act (“BGEPA”), it is requested that complete and unredacted copies of the following information and documents be provided no later than the close of business on May 30, 2013:

- 1) All Fish & Wildlife Service (“FWS”) reports of investigation, referrals to the U.S. Department of Justice, or declinations of prosecution under the MBTA and/or BGEPA issued between January 1, 2009 and the present date, including any supporting documentation or attachments thereto, concerning bird fatalities associated with the development and/or operation of any energy facilities.
- 2) The FWS issued final Wind Energy Guidelines in March 2012 and Eagle Conservation Plan Guidance in May 2013. Both encourage coordination and communication between the FWS and wind energy project developers on the formulation and implementation of studies to assess and mitigate the impacts on protected birds and the siting of wind turbines. Please provide copies of all communications between the FWS and representatives from wind energy projects concerning reports of bird fatalities, compliance with the MBTA and/or the BGEPA, the development of eagle conservation plans, and incidental take permit applications under the BGEPA.

- 3) All policies, guidance, memoranda, legal analysis, emails, or other documents concerning discretion to not take enforcement action under the MBTA and/or the BGEPA for bird fatalities associated with energy facilities.
- 4) All e-mails, memoranda, or other documents between FWS and the American Wind Wildlife Institute concerning development and operation of a database of avian mortality data, including any documents related to access to the database by FWS personnel or the public.
- 5) The FWS has proposed changing the eagle take regulations at 50 C.F.R. Parts 13 and 22, 77 Fed. Reg. 22267 (April 13, 2012). Please provide an update on when FWS anticipates issuing the final rule. Also, please provide copies of all agendas, minutes, presentations, briefing materials, notes, or other documents related to any meetings concerning Department or FWS personnel and representatives from the wind industry or other stakeholders concerning the proposed rule.

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

Sincerely,



Doc Hastings
Chairman

Enclosure

Responding to Committee Document Requests

A. Definitions

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

B. Instructions

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

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

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

12. Production materials should be delivered to:

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