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

March 4, 2013

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JEFFREY DUNCAN
DEMOCRATIC STAFF DIRECTOR

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington DC 20240

Dear Secretary Salazar:

The Department of the Interior ("Department") established the Investigations and Review Unit ("IRU") in 2010, reportedly to respond to allegations of wrongdoing and unethical behavior by the offshore oil and gas industry and the Department officials who regulate those activities and to help coordinate the Department's response to significant events, including accidents, spills, and other crises.

Michael Bromwich, former director of the Department's Bureau of Ocean Energy Management, Regulation, and Enforcement, created the IRU as part of the Department's broader reorganization of offshore regulatory and permitting functions, explaining, "[I]t is critical that we have an internal compliance and investigations team that can act quickly and report directly to me."¹ More than two years after its creation, little is known about the IRU's personnel, organization, and activities.

It is unclear whether the IRU has been serving as a law enforcement organization within the Department and how its activities fit within the Bureau of Safety and Environmental Enforcement's ("BSEE") traditional role of regulating the offshore oil and gas industry, investigating accidents, and working to improve the safety of offshore operations or within the Bureau of Ocean Energy Management ("BOEM"), which manages the exploration and development of offshore resources.

BSEE is the regulatory agency within the Department charged with investigating offshore accidents and potential violations of the Outer Continental Shelf Lands Act. BSEE accident

¹ See, Department of the Interior press release, "Bromwich Launches Investigative/Compliance Team to Spur Reform, Restructuring of Offshore Oil and Gas Regulation," June 23, 2010; available at <http://www.doi.gov/news/pressreleases/Bromwich-Launches-Investigative-Compliance-Team-to-Spur-Reform-Restructuring-of-Offshore-Oil-and-Gas-Regulation.cfm> (last accessed February 13, 2013).

investigations are intended to be fact-finding proceedings with no adverse parties, 30 C.F.R. § 250.191, that may result in civil penalties and fines, 30 C.F.R. § 250.1404. However, the Department's budget justification for fiscal year 2012 indicates that the IRU would be staffed by 20 new employees, at a cost of almost \$5.8 million, in addition to the Department's existing offshore investigation and safety inspector functions. The Department's FY 2013 budget justification explains the IRU is currently operating only in BSEE.

It is also unclear how many people actually work in the IRU, what their backgrounds and expertise are, whether they serve as designated law enforcement officers, and whether their positions are necessary or are duplicative of other investigative and compliance functions within the Department, including the Office of Inspector General and other BSEE components.

Mr. Bromwich wrote in *Newsweek* magazine² in 2010 that the IRU would be staffed by prosecutors, investigators, and scientists who would look into allegations of misconduct and conflicts of interest against internal Bureau employees as well as industry officials. He added, "If people fail to cooperate, they could be dismissed from their jobs or their company's drilling permits could be suspended. And if we find serious wrongdoing, we'll refer it to the Justice Department for possible prosecution. At my direction, the team will explore conflicts of interest, real or perceived, and devise broader structural solutions where needed."³ The BSEE website, however, describes the IRU staff as a "team of professionals with law enforcement backgrounds or technical expertise."⁴

A 2012 vacancy announcement for multiple IRU special investigator positions stated the job required experience performing a range of investigative functions, including conducting onsite inquiries and collecting evidence and witness statements, drafting reports, and understanding the laws and regulations administered by BSEE. It also described the position as requiring the ability to walk, bend, climb ladders, and ride helicopters and the ability to pass a pre-employment background investigation and possess a Top Secret clearance. It is unclear whether the IRU employs additional staff beyond these special investigator positions.

The Department maintains several law enforcement units, including ones in the National Park Service and the Bureau of Indian Affairs. The Office of Law Enforcement and Security, within the Office of Policy, Management and Budget, establishes policies for the operation of law enforcement programs across the Department, including the hiring and training of law enforcement personnel, the handling of evidence, and on the use of force.

Questions remain about whether the IRU has been allowed to operate as a law enforcement program, reporting only to the BSEE Director and without sufficient public scrutiny and oversight from the Department and the Congress. None of the internal Department policies and orders related to the establishment of the IRU shed light on whether these employees are

² See, *Newsweek* Magazine, "How to Regulate the Gulf," July 1, 2010; available at: <http://www.thedailybeast.com/newsweek/2010/07/02/how-to-regulate-the-gulf.html> (last accessed February 13, 2013).

³ *Id.*

⁴ See, BSEE/IRU website, available at: <http://www.bsee.gov/Inspection-and-Enforcement/Investigations-and-Review-Unit.aspx> (last accessed February 13, 2013).

serving in a law enforcement capacity, how they are to interact with witnesses or collect evidence, and what technical expertise they possess.

In order to better understand the operation, activities, and staffing of the IRU, please provide the following information and documents by the close of business on March 18, 2013:

- 1) The number of employees working in the IRU, including any employees on a temporary assignment or detail; the position classification and position description for all such employees; and the GS level for all such employees.
- 2) Under Departmental Order 112 DM 17, the Office of Law Enforcement and Security is responsible for approving law enforcement training, personnel standards, and reviews bureau law enforcement programs for compliance with applicable laws and other requirements for all Department law enforcement personnel. Has the Office of Law Enforcement and Security issued any guidance or policies related to the training, hiring, or activities of law enforcement officers within BSEE or BOEM, including the IRU? If yes, please provide copies all such guidance and policies.
- 3) Under Departmental Order 446 DM 1, Bureaus that administer law enforcement programs are directed to designate a law enforcement administrator and senior law enforcement official responsible for discharging Departmental policies, including ensuring that law enforcement officers have undergone suitable background investigations and that law enforcement officers have received proper training and any necessary commissioning with credentials and identification. Has BSEE and/or BOEM designated any Bureau employee, including within the IRU, as a law enforcement administrator, senior law enforcement official, or law enforcement officer? If yes, describe when these designations were made and please provide copies of all such designations.
- 4) Under Departmental Order 446 DM 1.7, only law enforcement officers are authorized to discharge law enforcement duties, and each law enforcement officer shall be issued credentials and be authorized to exercise their official authority, consistent with applicable laws, regulations, and Department policies. Do any IRU employees conduct law enforcement activities? If yes, have the individuals been issued credentials and/or authorized to exercise the duties of a law enforcement official?
- 5) Under Departmental Order 446 DM 2, a pre-employment background investigation is required to be completed and favorably adjudicated prior to placement in a law enforcement position, unless a waiver (form DI 1912) is granted. In addition, all entry-level law enforcement personnel and criminal investigators are required to undergo specialized training at the Federal Law Enforcement Training Center, or other approved training course, as well as annual training every year thereafter.
 - a. Please describe whether all IRU employees have undergone such pre-employment background investigations. If not, please provide a copy of any applicable waiver. If no such waiver is available, please explain why not.
 - b. Please describe whether IRU employees are required to undergo this specialized

law enforcement training. If not, please describe what if any training requirements IRU employees are required to undertake.

- 6) Under Departmental Order 446 DM 7, Bureau law enforcement offices are responsible for safeguarding all property taken into custody until it is released to the rightful owner or disposed of in accordance with applicable law. In addition, each Bureau with a law enforcement office is responsible for establishing written procedures to ensure that only properly trained law enforcement personnel are collecting evidence and processing a crime scene, that a chain of custody is properly established, and that evidence is properly stored and restricted.
 - a. Please describe whether IRU employees perform activities related to the collection, handling, or storage of evidence. If yes, please describe what if any policies and guidance have been established concerning the collection, handling, and storage of evidence by IRU employees.
 - b. Please describe what if any policies and guidance exists concerning the taking of witness statements by IRU employees.
- 7) Under Departmental Order 446 DM 10, the Secretary may authorize designated employees to carry firearms, and this authority may be delegated to Bureau heads, or their designees. In addition, only law enforcement officers are authorized to carry firearms for law enforcement purposes. However, Bureaus may develop policies permitting additional employees to carry firearms for duties other than law enforcement when functions or circumstances related to their duties necessitate carrying firearms. Employees authorized to carry firearms are generally required to carry only Government issued firearms, except upon written authorization from the Bureau head. All authorized employees are required under Departmental Order 446 DM 2 to undergo initial firearm qualification, and semiannual qualification thereafter.
 - a. Please describe whether the Secretary has delegated authority to designate any BSEE and/or BOEM employees, including those in the IRU, to carry firearms. If yes, please provide copies of all such delegations or re-delegations.
 - b. Please describe whether any BSEE and/or BOEM employees, including those in the IRU, are authorized to carry a firearm, either for law enforcement purposes or because the duties of their job necessitate it and why.
 - c. Please describe whether any such authorized employees have been authorized to carry non-Government issued firearms. If yes, please provide copies of any such authorizations.
 - d. Please describe what if any training BSEE and/or BOEM employees, including those in the IRU, undergo to become qualified in the use of a firearm.
- 8) Under Secretarial Order 3304, the IRU is required to coordinate with the Office of Inspector General, including pursuing investigations with the Office of Inspector General's consent and knowledge and advising the Office of Inspector General on the status and results of any IRU investigations. It also requires the IRU to consult with the Department's Ethics Office on matters that implicate the Standards of Ethical Conduct for Employees in the Executive Branch.
 - a. Please provide any policies and guidance concerning coordination between the

- IRU and the Office of Inspector General.
- b. Please provide any policies and guidance concerning coordination between the IRU and the Department's Ethics Office.
 - c. Please provide copies of all documents reflecting where the Office of Inspector General has given or withheld consent for the IRU to conduct an investigation.
 - d. Please provide copies of any status reports or results of investigations provided by the IRU to the Office of Inspector General.

Enclosed with this letter are instructions and definitions for complying with this request. Please have your staff contact Byron R. Brown, Senior Counsel for Oversight, Office of Oversight and Investigations, on (202) 225-2761 with any questions regarding this request, or to make arrangements for the production of the requested material.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", is written over a horizontal line.

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), 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,

date 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