

**SUBPOENA**

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE  
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable Dan Ashe, Director, U.S. Fish & Wildlife Service

You are hereby commanded to be and appear before the Committee on Natural Resources

of the House of Representatives of the United States at the place, date and time specified below.

to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 1324 Longworth House Office Building

Date: March 24, 2014

Time: 5 PM

To U.S. Marshals Service or any designated staff member  
of the Committee on Natural Resources to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,  
at the city of Washington, this 11<sup>th</sup> day of March, 2014.

[Signature]  
Chairman or Authorized Member

Attest:  
Karen P. Haas  
Clerk

**PROOF OF SERVICE**

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Subpoena for The Honorable Dan Ashe, Director  
Service: Carlos Uriarte, Sr. Counsel, U.S. Department of the Interior  
Address U.S. Fish & Wildlife Service, U.S. Department of the Interior  
1849 C St., NW, Washington, D.C. 20240  
before the Committee on Natural Resources  
U.S. House of Representatives  
113th Congress

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Served by (print name) Byron R. Brown  
Title Sr. Counsel and Director, office of Oversight & Investigations  
Manner of service by hand delivery to Carlos Uriarte, Sr. Counsel,  
U.S. Department of the Interior  
Date March 11, 2014  
Signature of Server Byron R. Brown  
Address 1324 Longworth House office Building

## SCHEDULE OF DOCUMENTS

In accordance with the attached schedule instructions, you, Dan Ashe, Director, U.S. Fish & Wildlife Service ("FWS"), are required to produce all records described below:

1. Complete and unredacted copies of the following documents from the FWS' December 2, 2013 document production:
  - a. Undated "A Blueprint for Eagle Conservation and Wind Energy Development"; Document Name: "Eagle Briefing Document - Nov 20 - Bean and DC edits.docx".
  - b. September 22, 2011 Information Memorandum to the Secretary with Cottingham edits dated September 27 from Director, U.S. Fish and Wildlife Service, copy to Jerome Ford, Assistant Director Migratory Bird Program; Subject: Eagle Conservation Plan Guidance - Update.
  - c. November 27, 2012 Draft Information Memorandum to the Secretary with FWS Comments dated December 4 from Steve Black and Janea Scott, copy to Laura Davis, David J. Hayes, Ken Lane; Re: Eagles.
  - d. November 27, 2012 Information Memorandum to the Secretary from Steve Black and Janea Scott, copy to Laura Davis, David J. Hayes, Ken Lane; Re: Eagles.
  - e. September 13, 2011 Briefing Paper for the Secretary from Dan Ashe, Director; Subject: Finding Solutions to Wind Energy – Wildlife Interactions; September 9, 2011 VERSION.
  - f. Undated Information Memorandum for the Secretary from Dan Ashe, Deputy Director, U.S. Fish and Wildlife Service; Subject: Status Update of Wind Energy Guidelines.
  - g. June 7, 2011 Information Memorandum for the Secretary from Dan Ashe, Deputy Director for U.S. Fish & Wildlife Service; Phone: 202 208-4545; Subject: FWS Proposed Wind Energy Guidelines and Eagle Guidance.
  - h. February 20, 2013 email from Albert Manville to Charisa Morris at 11:17 AM, copy eric\_kershner@fws.gov, Meghan\_sadlowski@fws.gov, sarah\_p\_mott@fws.gov, george\_t\_allen@fws.gov, Albert Manville; Subject: Re: Letter to Hayes.
  - i. February 7, 2013 email from Brian Millsap to Sarah P Mott at 8:58 PM; Subject: Fwd: revised comprehensive strategy paper.
  - j. February 7, 2013 DRAFT U.S. Fish and Wildlife Service document; Document Name: "Eagle Briefing Document - Feb 2013 draft 2.docx".
  - k. February 5, 2013 email from Jerome Ford to Brian Millsap, Mike Johnson, Brad Bortner, Sarah P Mott at 6:41 PM; Subject: Fwd: Eagle dialog process.
  - l. February 5, 2013 email from Jerome Ford to Sarah P Mott, Mike Johnson at 5:39 PM; subject: Fwd: Eagle dialog process.
  - m. February 5, 2013 email from Mike Johnson to Sarah Mott, Brian A Millsap at 12:29 PM; Subject: Re: revised eagle strategy.
  - n. February 1, 2013 email from Jerome Ford to David Cottingham at 5:16 PM, copy Janea Scott, Steve Black, Betsy Hildebrandt, Sarah P Mott, David Cottingham; Subject: Re: Service eagle papers.

- o. February 1, 2013 email from Sarah Mott to Brad Bortner at 12:02 PM; Subject: Re: statement on figure of bird deaths Wind.
- p. January 7, 2013 email from Jerome Ford to Mike Johnson, Brad Bortner, Sarah P Mott, David Cottingham at 12:53 PM; Subject: Group of 16 Meeting and Expectations.
- q. November 15, 2012 email from jerome\_ford@fws.gov to brad\_bortner@fws.gov at 1:20 PM, copy mike\_j\_johnson@fws.gov, Sarah\_P\_Mott@fws.gov; Subject: Re: hotel (Holiday Inn).
- r. October 24, 2012 email from Sarah\_P\_Mott@fws.gov to Julian\_DeLaughter@fws.gov at 5:01 PM; Subject: Re: Action items/eagles?
- s. January 24, 2013 email from Brian Millsap to Alexandra Pitts, Alicia F King, Amedee Brickey, Bill Howe, Brad Bortner, Brian A Millsap, Bryan Arroyo, Casey Stemler, Charisa Morris, Chris McKay, David Cottingham, Dean Demarest, Doug Alcorn, Eliza Savage, Emily Bjerre, Emily Jo Williams, Gary D Frazer, Greg M Hughes, James Dubowky, James R Kelley, Jeff Underwood, Jerome Ford, Kevin Kritz, Larry Bright, Lynn M Lewis, Marie E Strassburger, Michael Fris, Michael Young, Mike Johnson, Nanette Seto, Paul Padding, Paul Phifer, Philip Kline, Ren Lohofener, Resee Collins, Rick Sayers, Robert Trost, Russ Oates, Sarah P Mott, Scott Johnston, Sherry Morgan, Stephanie Jones, Steve J Lewis, Steve Oberholtzer, Susan Jacobsen, Theresa Rabot, Ulgonda Kirkpatrick at 1:59 PM; Subject: Notes from 1/24/13 EMT call.
- t. January 31, 2013 email from Brian Millsap to Brad Bortner at 11:54 AM; Subject: Re: Notes from 1/24/13 EMT call.
- u. February 5, 2013 email from Jerome Ford to Brian Milsap, Mike Johnson, Brad Bortner, Sarah P Mott at 6:41 PM; Subject: Fwd: Eagle dialog process.
- v. January 7, 2013 email from Brad Bortner to Jerome Ford at 8:59 AM, copy Mike Johnson; Subject: Re: eagle rule.
- w. October 19, 2012 email from Jerome Ford to Brad Bortner at 8:18 AM; Subject: RE: Response to the Letter of 16.
- x. February 19, 2013 email from David Cottingham to Martin Kodis, William Woody, Betsy Hildebrandt at 5:03 PM, copy Larry Bright, Matt Huggler; Subject: RE: talking point for SOI-nominee.
- y. February 22, 2012 Information Memorandum for the Director from Ren Lohofener, Regional Director, Pacific Southwest Region; Subject: Region 8 Update – California, Nevada and Klamath Basin Hot Topics.
- z. March 22, 2012 Information Memorandum for the Director from Ren Lohofener, Regional Director, Pacific Southwest Region; Subject: Region 8 Update – California, Nevada and Klamath Basin Hot Topics.
- aa. March 8, 2012 Information Memorandum for the Director from Ren Lohofener, Regional Director, Pacific Southwest Region; Subject: Region 8 Update – California, Nevada and Klamath Basin Hot Topics.
- bb. September 11, 2012 email from Janea Scott to Michael Bean, Bryan Newland, Neil G Kornze, Michael J Pool, Gerald F. Pease, Jr., David Cottingham, Betsy Hildebrandt, Herbert Frost, Steve Black, Amy Sosin, Gregory Russell, Michael D Nedd, Anthony N Walters, Ted Boling, Vince Santucci, R W Gould, Kenneth Lane, John Tubbs, Carl D Rountree, Elizabeth A Klein, Elizabeth Johnson, Ray A

- Brady, Sarah A Quinn, Richard D Bouts, Thomas M Pogacnik, Alexandra Pitts at 9:39 AM; Subject: Agenda for Sept 12th Strike Team meeting.
- cc. February 5, 2013 email from David Cottingham to Dan Ashe, Betsy Hildebrandt, Rowan Gould, Stephen Guertin, Jerome Ford, David Cottingham at 5:10 PM; Subject: Eagle dialog process.
  - dd. September 13, 2012 email from Betsy Hildebrandt to Laura Davis, Elizabeth A Klein at 2:08 PM; Subject: Eagle guidance.
  - ee. December 20, 2012 email from Elizabeth Klein to Betsy Hildebrandt at 3:26 PM; Subject: eagle rule.
  - ff. December 10, 2012 email from Elizabeth Klein to betsy\_hildebrandt@fws.gov at 4:37 PM; Subject: Eagles.
  - gg. April 2, 2013 email from Betsy Hildebrandt to David Cottingham at 10:18 AM; Subject: Eagles.
  - hh. March 15, 2013 email from Elizabeth Klein to David Cottingham, Betsy Hildebrandt, Michael Bean at 10:29 AM; Subject: Eagles.
  - ii. September 13, 2012 email from David Cottingham to Betsy Hildebrandt, Michael Bean, Jerome Ford at 10:48 AM; Subject; FW: Chokecherry & Sierra Madre Wind Energy Project - Expert Report No. 2.
  - jj. October 5, 2012 email from Elizabeth Stevens to D M Ashe, Betsy Hildebrandt, David Cottingham at 11:00 AM; Subject: FW: DOI Chokecherry Press Call Tuesday with Dan.
  - kk. December 12, 2012 email from Alexandra Pitts to Betsy Hildebrandt at 12:53 PM; Subject: FW: Eagle docs for DRECP.
  - ll. November 26, 2012 email from David Cottingham to Betsy Hildebrandt, Dan Ashe at 7:43 AM; Subject: Fwd: DRECP Eagle Framework Document.
  - mm. February 28, 2013 email from Jerome Ford to Betsy Hildebrandt, Stephen Guertin, R W Gould, Dan Ashe at 4:19 PM, copy Mike Johnson, Brad Bortner, Sarah P Mott; Subject: Fwd: Jewll.
  - nn. November 8, 2012 email from Jerome Ford to Betsy Hildebrandt at 5:31 PM; Subject: Jeopardy Follow-up.
  - oo. February 28, 2013 email from David Cottingham to Dan Ashe, Stephen Guertin, Betsy Hildebrandt, Jerome Ford at 3:54 PM, copy Roslyn Sellars, Thomas Irwin; Subject: Meet with John Anderson on eagles.
  - pp. November 12, 2012 email from David Cottingham to Jerome Ford at 1:44 PM, copy Brian A Millsap, Betsy Hildebrandt; Subject; Quarles.
  - qq. April 10, 2013 email from David Cottingham to Jerome Ford at 2:38 PM, copy Mike Johnson, Sarah P Mott, Brad Bortner, George T Allen, Michael Bean, William Woody, Betsy Hildebrandt; Subject: Re: Briefing Paper for David Hayes.
  - rr. November 28, 2012 email from David Cottingham to Nanette Seto at 4:09 PM, copy Theresa Rabot, Christ McKay, Betsy Hildebrandt, Dan Ashe, Jerome Ford; Subject: Re: West Butte Wind Project.
  - ss. February 4, 2013 email from David Cottingham to Jerome Ford, Betsy Hildebrandt, Steve Black, Sarah P Mott, Brian A Millsap at 5:13 PM; Subject: revised eagle strategy.
  - tt. September 7, 2012 email from Michael Bean to Jerome Ford at 12:04 PM, copy Noreen Walsh, Betsy Hildebrandt; Subject: revisions to Chokecherry ROD.

- uu. October 9, 2012 DC Comments on A Blueprint for Eagle Conservation and Wind Energy Development.
  - vv. December 11, 2012 Framework for Golden Eagle Conservation and Permitting Under the Desert Renewable Energy Conservation Plan; Document Name: "Framework Document\_12\_11\_12.docx".
  - ww. November 2, 2012 Framework for Golden Eagle Conservation and Permitting Under the Desert Renewable Energy Conservation Plan.
  - xx. September 22, 2011 Information Memorandum to the Secretary from Director, U.S. Fish and Wildlife Service, copy to Jerome Ford, Assistant Director Migratory Bird Program; Subject: Eagle Conservation Plan Guidance - Update.
2. Complete and unredacted copies of the following documents from the FWS' March 10, 2014 document production:
- a. Document 20130516-FWS-BATCH008-DOC0001-EML-22203: May 29, 2012 email sent at 11:13 AM from Christy Johnson Hughes to Paul Kerlinger; Subject: RE: Tech Questions re Wind Energy Guidance.
  - b. Document 20130516-FWS-BATCH008-DOC0007-EML-22203: September 13, 2012 email sent at 10:48 AM from David Cottingham to Betsy Hildebrandt, Michael Bean, and Jerome Ford; Subject: FW: Chokecherry & Sierra Madre Wind Energy Project - Expert Report No. 2.
  - c. Document 20130516-FWS-BATCH008-DOC0010-LET-22203: Final Memorandum (as of January 31, 2013) Survey of USFWS Regions on Programmatic Eagle Take Permits.
  - d. Document 20130516-FWS-BATCH008-DOC0011-TKP-22203: Taking Points for Eagle Meeting on 2/11/13.
  - e. Document 20130516-FWS-BATCH008-DOC0029-EML-22203: September 5, 2012 email from Matthew Stuber to James Fuller, copy Scott Hicks, Jack Dingleline, and Burr Fisher; Subject: Re: Fw: Lake Winds Energy Park Bird Carcass at WTG #21.
3. Complete and unredacted copies of all documents concerning:
- a. All investigations by the Office of Law Enforcement of a violation of the Migratory Bird Treaty Act and/or the Bald and Golden Eagle Protection Act involving the development or operation of energy facilities that were closed and/or not referred to the Department of Justice from January 1, 2009 to the present date.
  - b. All investigations by the Office of Law Enforcement of a violation of the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act involving the development or operation of energy facilities that were referred to the Department of Justice from January 1, 2009 and the present date but for which the Department of Justice provided a formal or informal declination of prosecution to the Fish and Wildlife Service.

4. Complete and unredacted copies of all documents concerning the development of the Directive entitled, "Enforcement of the Migratory Bird Treaty Act as it Relates to Industry and Agriculture," issued by the Chief, Office of Law Enforcement, Fish and Wildlife Service, on October 17, 2012.
5. Complete and unredacted copies of all documents that were sent from, to, or otherwise in the possession, custody, or control of David Hayes, Elizabeth Klein, Steve Black, Janea Scott, Dan Ashe, David Cottingham, Betsy Hildebrandt, Gary Frazer, Ren Lohofener, Alexandra Pitts, Ted Boling, Neil Kornze, Michael Bean, and/or William Woody that:
  - a. Concern enforcement of the Migratory Bird Treaty Act and/or the Bald and Golden Eagle Protection Act; and
  - b. Were created or otherwise used in connection with any of the following documents:
    - i. The U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines issued in March 2012.
    - ii. The Eagle Conversation Plan Guidance Module 1 – Land-based Wind Energy Guidelines issued in April 2013.
    - iii. The draft rule of "Eagle Permits; Changes in the Regulations Governing Eagle Permitting" (77 Fed. Reg. 22267, April 13, 2012).
    - iv. The final rule "Eagle Permits; Changes in the Regulations Governing Eagle Permitting" (78 Fed. Reg. 73704, December 9, 2013).
    - v. The Desert Renewable Energy Conservation Plan.
6. Complete and unredacted copies of all documents related to communications between the Department of the Interior and the Department of Justice and/or the Office of Management and Budget concerning:
  - a. The Eagle Conversation Plan Guidance Module 1 – Land-based Wind Energy Guidelines issued in April 2013.
  - b. The proposed rule "Eagle Permits; Changes in the Regulations Governing Eagle Permitting" (77 Fed. Reg. 22267, April 13, 2012).
  - c. The final rule "Eagle Permits; Changes in the Regulations Governing Eagle Permitting" (78 Fed. Reg. 73704, December 9, 2013).

## SCHEDULE INSTRUCTIONS

1. In complying with this subpoena, you shall produce all responsive materials that are in your possession, custody, or control.
2. Documents responsive to the subpoena shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization or individual denoted in the subpoena has been, or is currently, known by any other name than that herein denoted, the subpoena shall be read also to include them under that alternative identification.
4. Each document produced shall be produced in a form that renders the document capable of being copied.
5. When you produce documents, you shall identify the paragraph or clause of the Schedule of Documents in the Committee's subpoena to which the documents respond.
6. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this subpoena was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.
7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the Schedule of Documents in the Committee's subpoena to which the documents are responsive, shall be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.
9. If any of the subpoenaed 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), you shall consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format shall also be produced in a searchable format.
10. In the event that a document is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.



11. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, you shall 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.
12. If a date or other descriptive detail set forth in this subpoena 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 subpoena, you shall produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This subpoena is continuing in nature and applies to any newly-discovered document. Any document not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.
14. All documents shall be bates-stamped sequentially and produced sequentially.
15. Two sets of documents shall be delivered to the Committee office in Room 1324 of the Longworth House Office Building. You shall consult with designated Committee staff regarding the method of delivery prior to sending any material.
16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

#### **DEFINITIONS FOR SCHEDULE**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, whether original or copy, or whether draft or final, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meeting or other communications, calendar entries, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and 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). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails,

microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) 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. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "Committee" means the Committee on Natural Resources of the U.S. House of Representatives.
3. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
4. 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, telexes, discussions, releases, personal delivery, or otherwise.
5. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
6. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
7. The terms "concerning," with respect to any given subject, document, or communication, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.