May 11, 2022

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530  

Dear Attorney General Garland:

We are writing to alert the U.S. Department of Justice (DOJ) of potentially criminal conduct at the U.S. Department of the Interior (DOI) during the previous administration.

Since 2019, the House Committee on Natural Resources has conducted an extensive investigation into the circumstances surrounding the U.S. Fish and Wildlife Service’s (FWS) decision on Oct. 26, 2017, to reverse its longstanding position regarding the proposed Villages at Vigneto development (Vigneto) in Benson, Arizona. Evidence strongly suggests the decision was the result of a quid pro quo between Vigneto’s developer, Michael Ingram, and senior level officials in the Trump administration, potentially including then–DOI Deputy Secretary David Bernhardt (Dep. Sec. Bernhardt). By this letter, we refer the matter to the Department of Justice to investigate and consider whether criminal charges should be brought against any party for a violation of 18 U.S.C. § 201 or any other applicable federal law.

Summary of Allegations

Pursuant to federal law, developments that require the disposal of dredged or fill material into navigable waters of the United States, like Vigneto, must first obtain a Clean Water Act Section 404 permit (Clean Water Act permit) from the U.S. Army Corps of Engineers (Army Corps). The Clean Water Act permit for Vigneto was originally issued in 2006 but was suspended in 2016. The permit was then noticed for re-evaluation in 2017 under unusual circumstances.

In April 2019, now–retired FWS Field Supervisor Steve Spangle disclosed receiving a phone call on Aug. 31, 2017, in which an attorney from DOI’s Office of the Solicitor directed him to reverse his longstanding decision that the Army Corps needed to formally consult with FWS pursuant to
the Endangered Species Act (ESA) regarding the then-suspended Clean Water Act permit for Vigneto. Reports later revealed that the phone call was directed by Dep. Sec. Bernhardt.

Only two weeks before that phone call, Dep. Sec. Bernhardt met with Vigneto’s developer, Michael Ingram, for a private breakfast meeting at a restaurant in Billings, Montana to discuss the project. The meeting was not disclosed in Dep. Sec. Bernhardt’s official calendar or travel documents.

Mr. Spangle issued an official reversal of his original decision on Vigneto’s potential adverse effects on endangered and threatened species on Oct. 26, 2017, less than two months after the phone call. His reversal would effectively green light the Clean Water Act permit.

On Oct. 6, 2017, between the Aug. 31 phone call and the Oct. 26 decision reversal, three incidents occurred. First, the Army Corps formally noticed a re-evaluation of the Clean Water Act permit. Second, Mr. Ingram and several others from Arizona made out-of-cycle donations on October 6, 2017, and the days immediately prior and subsequent, totaling $241,600 to then-President Trump’s joint fundraising committee, the Trump Victory Fund, and to the Republican National Committee. Third, Dep. Sec. Bernhardt held a meeting with a DOI attorney who had been instrumental in directing the reversal of the Vigneto decision.

Prior to Dep. Sec. Bernhardt’s intervention in the Vigneto decision, there was consensus among FWS career officials and DOI’s Office of the Solicitor regarding Mr. Spangle’s original decision that the Army Corps must consider all direct and indirect effects of the Vigneto development and not just those within the immediate area to be authorized under the Clean Water Act permit. In conversations with Committee staff, Mr. Spangle repeatedly remarked on how unusual it was for the Deputy Secretary to be involved in a field-level decision; throughout his nearly 30-year career with FWS, none of Mr. Spangle’s decisions had been elevated higher than the level of FWS Regional Director.

Combined, the atypical nature of Dep. Sec. Bernhardt’s involvement in a field-level decision, the subsequent reversal of a decision that was universally backed by the Department’s career staff, and the three incidents occurring on Oct. 6 point to official federal agency decision-making being executed in the interest of private gain rather than the American people.

The Villages at Vigneto Development

Vigneto is a proposed master-planned community near Benson, Arizona, that would cover more than 12,300 acres. The development would include approximately 28,000 housing units, as well as golf courses, restaurants, shops, over two dozen recreation and community facilities, and an accompanying network of roads and utilities. The development is proposed to be built on land
owned by El Dorado Holdings, Inc. (El Dorado), which is owned by Michael Ingram. The land and development proposal were previously under the ownership of Whetstone Partners (Whetstone).

The land on which Vigneto would be developed is located approximately two miles upland from the San Pedro River, the last major free-flowing river in the desert Southwest. The surrounding ecosystem is a fragile, yet critically important habitat for many unique species of wildlife¹ and is considered a critical corridor for millions of migratory songbirds. The U.S. Environmental Protection Agency (EPA) asserts that the San Pedro River is an “aquatic resource of national importance” (see Attachment 1).

Vigneto is proposed to be developed on land that covers at least 75 miles of the San Pedro River and its tributaries, which are considered waters of the United States under the Clean Water Act (see Attachment 2). Development of Vigneto would require pumping groundwater in significant volumes from aquifers that feed the San Pedro River. It would also require directly discharging fill material into washes (e.g., small desert streambeds with important ecological and hydrological functions) of the San Pedro River at approximately 350 different locations across the project site. Because these activities would impact waters of the United States, the Vigneto development requires a Clean Water Act permit from Army Corps.

Army Corps consults with EPA throughout its permit determinations. In addition, Army Corps must either formally or informally consult with FWS as required by section 7 of the Endangered Species Act (ESA) to determine whether endangered or threatened species or their critical habitat may be affected by the Army Corps’ permitting decision. If the Army Corps determines that its permitting decision may affect, but is not likely to adversely affect, endangered species or critical habitat, and FWS concurs with this determination, then the informal consultation is finished. However, if there may be adverse effects caused by issuance of the permit and any interdependent or interrelated actions, then the Army Corps must engage in formal consultation with FWS, which is a more extensive evaluation of the project and all effects on species and their habitats.

**Villages at Vigneto Clean Water Act Permit History and Timeline**

As the FWS Field Supervisor, Steve Spangle was responsible for leading the ESA consultation regarding Vigneto’s Clean Water Act permit on behalf of FWS. Prior to his decision reversal on Oct. 26, 2017, Mr. Spangle consistently disagreed with Army Corps about the required level of consultation necessary over issuance of the permit for more than a decade. While the Army Corps believed that only informal consultation was required and sought FWS’ concurrence, Mr. Spangle

¹ For example, the San Pedro River ecosystem is home to several species protected by the Endangered Species Act, including the jaguar, ocelot, western yellow-billed cuckoo, southwestern willow flycatcher, lesser long-nosed bat, and northern Mexican gartersnake.

http://naturalresources.house.gov
communicated to the Army Corps that FWS did not concur, and that formal consultation was required. This non-concurrence and request for formal consultation was transmitted to the Army Corps multiple times, both formally and informally.

When there are disagreements between an FWS Field Supervisor and another agency, the dispute may be elevated to the FWS Regional Director or to the FWS Director. Although elevation was considered (see Attachment 3), Mr. Spangle’s position to require formal consultation on the Vigneto permit was never officially elevated, which meant that Mr. Spangle had the authority to make that decision on behalf of FWS.

Mr. Spangle conferred and collaborated with others in FWS’ Arizona office, as well as an attorney in DOI’s Office of the Solicitor regarding the consultation with the Army Corps. Ample evidence demonstrates that there was consistent consensus among Mr. Spangle, his FWS colleagues, and DOI’s Office of the Solicitor about his decision that formal consultation is required on the Clean Water Act permit for the Vigneto project. The decision was communicated as such through numerous letters, emails, and briefing documents. The decision did not change until shortly after Dep. Sec. Bernhardt’s meeting with Vigneto developer, Mr. Ingram, on Aug. 18, 2017.

Vigneto’s permit history and the series of events leading up to the reversal of Mr. Spangle’s decision are documented below in the following three sections: 1) Prior to the Trump Administration, 2) The Trump Administration – Prior to Dep. Sec. Bernhardt’s Breakfast Meeting, and 3) The Trump Administration – Dep. Sec. Bernhardt’s Breakfast Meeting and Subsequent Events.

Prior to the Trump Administration

Vigneto’s previous owner, Whetstone, first applied for a Clean Water Act permit from Army Corps in or before 2004 in order to fill 70 acres of desert washes that qualified as waters of the United States. During the decision process, EPA raised concerns that the Vigneto development, as a whole, would have “substantial and unacceptable” consequences on an Aquatic Resource of National Importance (see Attachment 1). EPA further stated, “The range and severity of environmental consequences resulting from the Whetstone Ranch project are substantial and unacceptable and are contrary to the goals of the Clean Water Act.” In response to these concerns, Whetstone agreed to fill only 51 acres of washes and to purchase and preserve, enhance, and restore a 144-acre mitigation parcel along the San Pedro River (the “mitigation action”) (referenced in Attachment 4).

Around the same time, FWS Field Supervisor Steve Spangle wrote to Army Corps to assert that the effects of the entire project, not just the fill of the washes, should be analyzed in consideration of the Clean Water Act permit, including the project’s “direct, indirect, and cumulative effects,
and all interrelated and interdependent activities” (see Attachment 5). He argued that the groundwater pumping required for the project could adversely impact listed species and designated critical habitat.

Despite these concerns, Army Corps completed an environmental assessment in May 2006 that examined only the filling of the washes, rather than the effects of the development as a whole. Army Corps determined that the development would have “no effect” on listed species because those species did not inhabit that particular area and thus no level of consultation was required under the ESA.


Due to economic downturn (see Attachment 4), the project remained on hold until 2014 when Whetstone sold the land to El Dorado and transferred the Clean Water Act permit to them. El Dorado also acquired an additional 4,100 acres of land for the development, which was now called the Villages at Vigneto. During the same year, the Northern Mexican gartersnake and yellow-bellied cuckoo, two species with potential habitat and presence in the area, were newly listed by FWS under the Endangered Species Act as “threatened.”

The new species listings and El Dorado’s larger proposed project area raised new questions regarding the validity of the initial Clean Water Act permit. On July 15, 2015, Mr. Spangle sent an unsigned draft letter to Army Corps recommending that they request interagency consultation with FWS about whether the new larger development may affect threatened or endangered species given the changed circumstances (see Attachment 6).

On April 12, 2016, Army Corps requested concurrence from FWS that the mitigation action, not the entire project, “may affect, but is not likely to adversely affect” the two threatened species or their proposed habitat (referenced in Attachment 7). In response, Mr. Spangle sent an unsigned, draft letter to Army Corps on July 6, 2016 stating that he did not concur with their determination (see Attachment 8). Mr. Spangle asserted that the entire project, not just the off-site mitigation parcel, should be analyzed for its effects. Mr. Spangle detailed his rationale, stating the mitigation parcel and the entire Vigneto development are interrelated and interdependent actions, based on the “but for” test.² They should therefore be considered one single “action area” that must be analyzed as a whole.

² Per background narrative (see 51 FR 19926, page 19932) for the Endangered Species Act implementing regulations at 50 CFR 402.02 (page 882), the “but for” test should be used to assess whether an activity is interrelated or interdependent with a proposed federal action. The but for standard is met if one action would not occur but for the federal action under consultation. In this case, the permit for the entire Vigneto development would not occur but for the actions requiring the permit (i.e., the mitigation action). Therefore, based on the but for test, the
A June 28, 2016, email (see Attachment 9) in which a [redacted] in the Arizona office forwarded a draft of the unsigned letter to DOI’s Office of the Solicitor summarizes the reasons for FWS’ non-concurrence, stating,

In brief, our opinion is that: (1) we cannot concur with a not likely to adversely affect determination for the mitigation project on its own merits; (2) the mitigation project is inseparable from the larger development project; and (3) the development project may affect threatened and endangered species.

The letter had also been reviewed and approved by the Arizona Office’s [redacted] as indicated by the email below, demonstrating the office’s consensus about the conclusions (see figure below and Attachment 10).

Of note, a comment written by Mr. Spangle in a draft of the unsigned letter indicates that, during a phone call, the Army Corps agreed that the mitigation action and the whole Vigneto project area are interrelated actions (see figure below and Attachment 8).

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entire development and the mitigation action are interrelated and interdependent actions and should be considered one action area.
Given the non-concurrence from FWS, as well as a lawsuit filed against the agencies for failing to comply with the ESA, Army Corps suspended the Clean Water Act permit on July 20, 2016 (referenced in Attachment 7).

After a site visit to the Vigneto project area on Sept. 8, 2016, Mr. Spangle sent official correspondence to Army Corps on Oct. 14, 2016, memorializing that FWS did not concur with their determination (see Attachment 11). He again asserted FWS’ position that the entire development needed to be assessed for impacts on endangered or threatened species, including the indirect effects of the development, which included the water use associated with the approximately 20,000 homes planned to be built on the development.

On Nov. 3, 2016, according to an FWS briefing document, Army Corps stated it would request formal ESA section 7 consultation from FWS on the entire project, including both the mitigation action and the entire development (see Attachment 7).

The Trump Administration – Prior to Dep. Sec. Bernhardt’s Breakfast Meeting

Shortly after the beginning of the Trump administration, on May 26, 2017, Army Corps effectively rescinded their agreement to pursue formal consultation on the full Vigneto development. Instead, they transmitted a letter to FWS again requesting concurrence on only the mitigation action area (see Attachment 12). Their letter included a Biological Evaluation describing their determination that the actual Vigneto action area under their discretionary responsibility was less than a quarter of the size of entire development. This determination was based on their interpretation of the National Environmental Policy Act’s (NEPA) scope of analysis, which was described in Appendix H of the Biological Evaluation (see Attachment 13). In that case, even if the mitigation area were considered interrelated to the rest of the Vigneto project, only this new smaller action area would need to be examined. They contended that the smaller action area would not have any effects on threatened or endangered species and therefore did not need to be examined.

In addition, Appendix I of the Biological Evaluation claimed that, if necessary, the Vigneto development could feasibly proceed without having to fill the desert washes at all, thereby negating the need for a Clean Water Act permit, and the mitigation area required by the permit, entirely (see Attachment 14). This version of the development that would not require a Clean Water Act permit was referred to as a “no Federal action” alternative. The existence of a “no Federal action”
alternative meant that the development and the mitigation area no longer met the but for test for being interrelated activities. In other words, the effects of the development would occur regardless of whether the Clean Water Act permit, and the accompanying mitigation area, was required. This rationale, Army Corps contended, enabled them to pursue consultation on the mitigation area alone.

Mr. Spangle disagreed with the Biological Evaluation; he believed that the newly defined smaller action area described in the Evaluation was appropriate to meet legal obligations under NEPA but did not comport with the definition of an action area under the Endangered Species Act (ESA) and therefore had no bearing on FWS’ legal obligation to pursue consultation for the full Vigneto project area (see Attachment 15). He also did not believe that the “no Federal Action” alternative was equivalent to the original project proposal. Mr. Spangle’s position at the time is detailed in an August 2017 briefing document (see figure below and Attachment 16).³

The Corps’ May 26, 2017, view of the action area is based on the net difference between what has been proposed for development and a hypothetical “no Federal action” alternative that involves a project design that avoids fill of WUS. This hypothetical design is not what was ultimately proposed. The approach is useful for National Environmental Policy Act (NEPA) purposes, but has no bearing on the determination of an action area under the ESA. Corps staff, as well as their counsel, have reiterated their view in multiple conference calls in July and August, 2017.

To resolve their differences in opinion, Mr. Spangle and other FWS officials met with Army Corps on July 7, 2017. Both agencies agreed that formal consultation for the entire action area was required under provisions of ESA, even if Army Corps’ discretionary responsibility was more limited under provisions of NEPA. The two parties once again agreed to pursue formal consultation for the entire development and FWS began to draft a letter (see Attachment 17) with an anticipated timeline for consultation (see figure below and Attachment 18).

³“WUS” stands for “Waters of the U.S.”
On Wed, Jul 19, 2017 at 1:45 PM, [Redacted] wrote:

Steve,

This is the 30-day letter I drafted for the Villages at Vigneto subsequent to our July 6 meeting/call with the Corps and applicant. Did ___ forward this to you already? I also believe ___ wished to see it.

This is the straightforward version that starts formal consultation. I did note that the Corps' incoming BE cover letter/consultation request states that if we don’t concur, that we should consider it a request for formal consultation.

In any event, should we wait until we hear from the Corps' counsel before sending?

Thanks.

On July 17, only 10 days after the call, Army Corps emailed the DOI attorney saying, “The Corps requests that we meet again very soon to discuss action area and effects with attorneys from both our agencies present . . . The critical attendees are the attorneys,” (see Attachment 19). On July 26, Army Corps rejected the proposal to begin formal consultation, leaving the two agencies in disagreement again (referenced in Attachment 16), as evidenced by the email below in which the same FWS employee from the previous email says, “we seem to have moved backwards since the July 7 call,” (see figure below and Attachment 20).
On Aug. 7, Mr. Spangle informedally elevated the issue by conferring with FWS’ Southwestern Regional Office staff to determine whether they agreed with the approach to conduct formal consultation on the entire Vigneto project area, rather than Army Corps’ limited project area. As stated in a draft August briefing document (see Attachment 16):

We discussed the Villages at Vigneto consultation with Southwestern Regional Office staff in order to determine the direction to be taken by the agency with respect [sic] either a consultation based solely on the effects associated with the Corps’ limited view of the action area or a consultation based on the more-comprehensive [sic] action area as defined in the ESA’s implementing regulations. Regional Office staff advised us to continue with the latter approach and agreed to obtain guidance from the Branch of Environmental Review Branch [sic] at Headquarters.

The same briefing document described the support of FWS leadership for Mr. Spangle’s approach to Vigneto:

On a past ES Project Leaders conference call with [redacted], he stated that we should only sign Biological
Opinions that include analyses based on the action area defined by the ESA’s implementing regulations.

The briefing document also noted that FWS staff, DOI’s Solicitor’s Office, Army Corps staff and counsel, and El Dorado’s counsel had a conference call on Aug. 15, 2017, in which FWS again maintained their same position. Army Corps indicated that they may pursue formal elevation of the issue to the FWS Regional Director. Mr. Spangle prepared a subsequent briefing document to the FWS Regional Director stating, “FWS should be prepared to maintain our position with respect to the consultation should the issue be elevated by the Corps,” (see last page of Attachment 16).

With regards to the “no Federal action” alternative, an Aug. 1 email from the DOI attorney shows that he agreed with Mr. Spangle that the development of Vigneto could not occur without the Clean Water Act permit, thereby supporting the notion that the mitigation action and the whole Vigneto project area are interrelated activities (see figure below and Attachment 21). He also agreed that formal consultation would need to comply with ESA’s definition of the project area (i.e., the entire development).

--- Forwarded message ---
From: [Redacted]
Date: Tue, Aug 1, 2017 at 10:42 AM
Subject: Re: Action - Reschedule SPL-2003-826 Vigneto USFWS - TODAY between 10-4 MDT
To: "Spangle, Steve" <spangle@fws.gov>

ATTORNEY-CLIENT PRIVILEGED

I think they want to hear back from "us" after I had a chance to read their letter and appendices explaining why the BO should not cover any development. All I can say is:

1. I disagree with their position that the development will occur without the permit, and the Service will therefore determine the extent of the direct, indirect, interrelated and interdependent effects of the action. This is based upon my reading of the appendices which state that future development is "feasible" without the permit.
2. It appears to me that the action is the mitigation property AND reissuance of the permit.

Those are the only 2 things I can say after reading their documents. I have no intention of addressing their analysis that applies NEPA definitions to this situation. The Service can only apply ESA definitions to BO analysis. Unless you want me to say anything else, I will stay quiet and let you do the talking. I get the feeling they are trying to bait this office into putting something in writing so they can litigate these issues between the agencies. I will not go there.
The Trump Administration – Dep. Sec. Bernhardt’s Breakfast Meeting and Subsequent Events

As detailed in the previous section, Mr. Spangle consistently maintained FWS’ decision that formal consultation must occur for the mitigation action and the full Vigneto project area through at least Aug. 15, 2017. His position was supported by other Arizona field office staff, Southwestern Regional Office Staff, and DOI’s Office of the Solicitor. His approach to reaching that decision concurred with the approach outlined by the FWS Assistant Director for Endangered Species. Mr. Spangle was preparing the FWS Regional Director to maintain this same position should the issue be formally elevated by Army Corps.

The consensus among FWS employees did not change course until Mr. Spangle received a phone call from Peg Romanik, an attorney in DOI’s Office of the Solicitor, on Aug. 31, 2017. The rapid succession of events leading up to, including, and transpiring after that phone call until Oct. 26, 2017 are detailed below.

On Aug. 17, 2017, two days after the FWS reiterated its position on the aforementioned call with El Dorado’s counsel, Mr. Ingram sent an email to DOI Secretary Ryan Zinke’s personal email address indicating that Mr. Ingram was planning to meet with Dep. Sec. Bernhardt the following day in Billings, Montana (see figure below and Attachment 22). He attached a copy of a memorandum detailing the dispute between FWS and Army Corps. The memo argued that FWS should accept Army Corps’ position and further suggested that the FWS Director should issue a memorandum instructing field offices to “respect the federal action agency’s [i.e., Army Corps] determination of the proper scope of the action.”

![Email Image](attachment://email.jpg)

In a subsequent email, again to Zinke’s personal email address, Mr. Ingram attached a bulleted summary of the Vigneto dispute that stressed a “need for high level action to ensure consistency and correct application of the FWS’ regulations that govern Section 7 consultation,” (see figure below and Attachment 23).
Of note, the Federal Records Act requires that official business matters contained in private email correspondence be transmitted to an official government email address within 20 days.\(^4\) None of Secretary Zinke's emails referenced here were included in documents that DOI produced to the Committee.

The breakfast meeting that Mr. Ingram referred to in his Aug. 17 email did not appear in Dep. Sec. Bernhardt's public calendar or travel schedule for the following day (see figures below and Attachments 24 and 25).

Friday, August 18, 2017
Billings, MT → Washington, DC

9:30am
Note: Heather Swift departs for airport

9:30 - 9:50am
All-hands meeting with BLM Montana/Dakotas
Location: BLM Montana/Dakotas State Office
5001 Southgate Drive - Billings
POC: (b) (6)

9:50 - 10:30am
Meeting with BLM Montana/Dakotas senior leadership
Location: As above

However, an Aug. 17 email from Dep. Sec. Bernhardt’s Special Assistant to Dep. Sec. Bernhardt’s official DOI email account confirmed that the breakfast meeting would take place in Dep. Sec. Bernhardt’s hotel the next morning (see figure below and Attachment 26).

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From: Banzer, Ellen
To: Fred Bernhart,
Cc: [redacted]
Subject: Confirming Breakfast Meeting Tomorrow
Date: Thursday, August 17, 2017 5:44:16 PM

Good Evening,

I apologize for mistakenly sending my earlier emails from Scott’s account. I have made arrangements for your breakfast meeting with Mike Ingram at 8:00 a.m. tomorrow. I reserved the private dining room at the Montana Sky Restaurant, which is on the 20th floor of your hotel. The reservation is under your name. There is a buffet or menu service available. I have confirmed with Mike’s assistant, [redacted] so everything should be all set.

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An email between Mr. Ingram and Michael Reinbold, one of Mr. Ingram’s development partners for Vigneto, indicated that a call with Dep. Sec. Bernhardt was also scheduled for that day (see figure below and Attachment 27). The call also did not appear on Dep. Sec. Bernhardt’s public calendar or travel documents.
When questioned in a 2019 transcribed interview with the Committee on a separate issue, DOI Chief of Staff Todd Willens was unable or unwilling to explain why the breakfast meeting did not appear in Dep. Sec. Bernhardt’s calendars, travel documents, routine scheduling correspondence with the DOI Ethics Department, meeting request forms, a daily scheduling card provided to Dep. Sec. Bernhardt, or any other scheduling documentation that DOI provided to the Committee. During this questioning, Mr. Willens abruptly requested a break, despite the agreement to keep breaks to previously designated transition periods. He had not requested a break before that time.

Interviewer: So normal practice was to have somebody fill out a meeting request form before they could meet with him [Dep. Sec. Bernhardt], correct?
Willens: Correct.

Interviewer: Okay. So as far as you know, with no meeting request form, no scheduling emails, would this [meeting with Mr. Ingram] have been cleared through ethics?
Willens: It would have been run through ethics.

Interviewer: Okay. And how would that have happened?
Willens: We would have been -- the meeting request form would have been filled out, it would have been submitted to ethics, and then it would have been -- the response one way or the other would have been given back to [the scheduler], and then [the scheduler] would schedule it for a call or a meeting, whatever he wants.

Interviewer: Okay. But we didn’t receive any scheduling emails or meeting request forms, so --
Willens: I don’t know.

Interviewer: Okay. So on August 31st --
Willens: Can I take a break for a couple minutes, do you mind?

Less than two weeks after the breakfast meeting, on Aug. 31, 2017, Dep. Sec. Bernhardt requested a meeting with Peg Romanik from DOI’s Office of the Solicitor and Richard Goeken, Deputy Solicitor for Parks and Fish and Wildlife (see figure below and Attachment 28).

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5 Transcribed Interview of Todd Willens, U.S. Department of the Interior for the U.S. House Committee on Oversight and Reform and the U.S. House Committee on Natural Resources (July 18, 2019).
Mr. Goeken was presumably unable to attend, as is reflected in Dep. Sec. Bernhardt’s public calendar (see Attachment 29). Immediately after the meeting, Ms. Romanik emailed Mr. Goeken to tell him that the 8:30 a.m. meeting was about “the Corps matter.” She referred to an unidentified attachment (see figure below and Attachment 30).

Mr. Spangle says that, around midmorning that same day, he received the phone call from Ms. Romanik in which she directed him to change his decision about Vigneto at the request of a “high level politico.” Hours later, Dep. Sec. Bernhardt’s public calendar shows that he, Ms. Romanik, and Mr. Goeken held another meeting at 1:30 p.m (see figure below and Attachment 29). Dep. Sec. Bernhardt’s scheduler was also listed on the schedule as a matter of practice, although she did not typically attend meetings.\(^6\)


\(^7\) Briefing with [redacted], U.S. Department of the Interior for the U.S. House Committee on Oversight and Reform and the U.S. House Committee on Natural Resources (June 10, 2019).
That evening, Ms. Romanik sent an email about Vigneto to Mr. Spangle and the DOI attorney who had been working closely with Mr. Spangle on Vigneto throughout its permit history. In her email, she contended that because Vigneto could be developed without a Clean Water Act permit (*i.e.*, the “no Federal action” alternative), there was no *but for* causation, indicating that the development and the permit activities, including the mitigation action, were not interrelated activities (see figure below and Attachment 31).

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causation standard
Thu, Aug 31, 2017 at 7:21 PM

Romanik, Peg
To: "Spangle, Steve" <steve.spanagle@fws.gov>
Cc: [redacted]

Steve and [redacted],

I am emailing about the consultation with Corps of Engineers for the Offsite Mitigation Parcel for the Villages at Vigneto Development Project, Cochise County, Arizona (Permit Number 2003-00826-SD). There is an outstanding issue about the inclusion of the effects of future development in the consultation and whether those development effects are an interrelated or independent action as defined in the section 7 consultation handbook. As noted in your October 14, 2016 letter to the Corps, the correct causation standard to determine if an action is appropriately considered in a specific consultation is whether that action would not occur "but for" the federal agency action under consultation. The 9th Circuit has held that if a project will go forward without the federal action, there is no "but for" causation. See, Sierra Club v. Bureau of Land Management, 786 F.3d 1219 (9th Cir. 2015).

We reviewed Appendix 1 of the Corps' Biological Evaluation - specifically, the document entitled "No Federal Action Alternative Description." Based on this review, we determined that the project had a reasonable likelihood of going forward regardless of whether the developer could get a Corps permit or not. While the project could potentially have different infrastructure, the "no action alternative" is feasible and represents a viable alternative. Therefore, there is no "but for" causal link between the Corps' permit/mitigation action and the future development.

Peg
Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior
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Mr. Spangle forwarded the email to [redacted], indicating his disagreements with her and asserting that there was now "conflicting SOL [solicitor] advice." (see figure below and Attachment 32).
It appears she confused "interrelated and interdependent actions" with "indirect effects". The former doesn't involve causation but the latter does. Nonetheless if someone (who?) determines that alternative designs are feasible, there would be no "but for" causation and thus no indirect effects according to her reasoning.

FYI [redacted] has said that he could argue it either way, but he has held to his advice that we consider the indirect effects. We thus have conflicting SOL advice.

Sent from my iPhone

Begin forwarded message:

The next day, Sept. 1, [redacted] forwarded the email to [redacted]. His email indicated both a sense of alert and caution (see figure below and Attachment 33).

Several days later, on Sept. 12, the DOI attorney who had been working on Vigneto emailed Ms. Romanik expressing his doubt in her assessment that Vigneto's "no Federal action" alternative was feasible. He also did not believe feasibility was the appropriate legal standard to use. Finally, he cautioned her by saying, "the people who made this decision need to know the risks they are facing," (see figure below and Attachment 34).
Hey Peg -

Great talking with you yesterday. Please see the attached. There is more to the CoE and FWS administrative records than Appendix I. This short analysis, along with Appendix H, and probably other documents in the record we have not yet found, are going to make it hard to argue that the "no action alternative" is feasible. Frankly, I do not agree that "feasible" is the standard based on my reading of the Handbook and Sierra Club. I think the standard is "will go forward" and "would occur." Regardless, please use this as you see fit. I am not trying to change anyone's mind here, but the people who made this decision need to know the risks they are facing. Thanks.

Two days later, on Sept. 14, El Dorado sent a letter to Army Corps advising of their intention to proceed with the Vigneto project’s “no Federal action” alternative if necessary (see Attachment 4). This declaration presumably addressed the DOI attorney’s concerns about meeting the “will go forward” or “would occur” standard.

Less than two weeks later, on Sept. 25, Army Corps transmitted the letter from El Dorado to FWS saying,

With this clarification on the certainty of the no Federal action alternative and very limited control and responsibility of the Corps’ section 404 Clean Water Act permit authority over the proposed development project, we believe the views expressed in your letter dated Oct. 14, 2016, incorrectly characterizes the direct and indirect effects of the proposed federal action. As such, we request that you retract your letter. (See Attachment 35).

On Oct. 6, the Army Corps issued a public notice announcing the re-evaluation of the Clean Water Act permit for Vigneto (see figure below and Attachment 36).
It is probable that El Dorado already knew the permit would be noticed for re-evaluation. A draft copy of the public notice dated Oct. 4, 2017, was included in a document production from El Dorado to the Committee (see Attachment 37). Also, in a heavily redacted “Partners Update” from El Dorado dated Oct. 4, 2017, the company expressed confidence that the Clean Water Act permit would be reinstated soon (see figure below and Attachments 38 and 39).

On Oct. 6, the same day the permit re-evaluation was noticed, Mr. Ingram made an unusual, out-of-cycle $10,000 donation to the Trump Victory Fund (TVF), then a joint fundraising committee. He was not the only person to make a large donation at this time; eleven other individuals from Arizona also donated to TVF on Oct. 5 and Oct. 6 and another individual donated to TVF on Oct. 10. In total, the 13 donors gave $147,000 to TVF between Oct. 5 and Oct. 10. See Appendix 1 for details on all 13 individuals’ donations.

Joint fundraising committees can be used as pass-throughs for donated funds. The donor can specify the ultimate destination of the funds, or the joint fundraising committee can distribute the donations according to an agreement between the committee and the recipients. The ultimate fund recipients for TVF were the Republican National Committee (RNC), Donald J. Trump for President, Inc. (DJTFP), and state Republican parties.8

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Each donor, except Mr. Ingram and Edward Robson, directed $5,400 to DJTFP, a personal campaign fund over which Trump had the most direct control. The first $2,700 was for the primary election and the second $2,700 was for the general election, which was the maximum donation amount for both campaign types at the time.

Federal Elections Commission records show that Mr. Ingram also directed $5,400 to DJTFP on Oct. 6, but those donations were refunded, possibly because Mr. Ingram had already donated the maximum amount in December 2016. Edward Robson had also already donated the maximum amount to DJTFP on Aug. 28, 2017. However, his son, Steven Robson donated $5,400 on Oct. 10, which was then directed to DJTFP.

Nine of the 13 donors gave more than $5,400 to TVF. In those cases, most or all of the remaining funds were directed to the Republican National Committee. Donald Tapia also gave $94,600 to the RNC directly. In total, between Oct. 5 and Oct. 10, the 13 individuals donated $241,600 to the RNC and TVF, with $59,400 of the TVF funds going to DJTFP.

This level of donor activity was not typical. Throughout the entire 2017–2018 election cycle, there were no other days in which more than three people from Arizona donated $2,700 or more to TVF.

There is evidence suggesting that Mr. Ingram had a relationship with most of the donors:

- **Warren Florkiewicz** is a co-owner of El Dorado Benson, the LLC associated with Vigneto.9
- **Gerald Colangelo** is a cofounder of JDM Partners, which partnered with El Dorado on a major real estate development called Douglas Ranch.10 **Mel Shultz** and **David Eaton** are also JDM cofounders.
- **David McIntyre, Jr.,** CEO of Triwest Healthcare, cohosted an event with Mr. Ingram and his wife, featuring actor Gary Sinise on March 9, 2012.11 TriWest and El Dorado have been members of the Greater Phoenix Economic Council/Greater Phoenix Leadership since at least 2015.12

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Edward Robson is an owner of Robson Communities, a prominent and prolific developer of real estate projects in Arizona and Texas. Steven Robson is his son, who is also a developer.

Arturo “Arte” Moreno served on the board of TGen, the Translational Genomics Research Institute Foundation since 2017. According to the Arizona Corporation Commission, Mr. Ingram is a Director of TGen. Carole Moreno is Arte Moreno’s wife.

Jerry Moyes has served with Mr. Ingram on the Board of the Arizona-Mexico Commission since at least 2017.

The Committee did not find publicly available evidence of relationships between Mr. Ingram and Donald Tapia and Jason Hope.

Also on Oct. 6, the same day of Mr. Ingram’s donation and the permit re-evaluation announcement, Dep. Sec. Bernhardt held a meeting with Ms. Romanik. The other two listed attendees were scheduling and administrative support who, as previously mentioned, did not always attend meetings when listed. The subject of that meeting was not disclosed in Dep. Sec. Bernhardt’s calendar (see figure below and Attachment 40).

Beginning shortly after Oct. 6 and continuing until the release of Mr. Spangle’s official decision reversal on Oct. 26, 2017, a series of emails and comments on draft documents track the communication between Mr. Spangle, other Arizona field office staff, and the DOI attorney who had previously worked on Vigneto. The documents demonstrate the challenges inherent in credibly reversing this decision given FWS’ longstanding position that all of the effects caused by the full Vigneto project area needed to be assessed and evaluated. Several examples are shown below.

On Oct. 11, 2017, one of the biologists in the Arizona field office emailed a colleague indicating Mr. Spangle’s concern that reversing his decision would have the appearance

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15 Office of the Governor, Governor’s Appointments of State Officials and Members of Boards and Commissions (July to Dec. 2017), available at https://bc.azgovernor.gov/file/29043/download?token=t3KFrHtt

http://naturalresources.house.gov
that they “arbitrarily about-faced” on their position (see figure below and Attachment 41).

--- Forwarded message ---
From: [Redacted]
Date: Wed, Oct 11, 2017 at 11:19 AM
Subject: Re: DRAFT text deferring to Corps' Villages at Vigneto action area
To: [Redacted]

I think Steve will want a little more detail on how El Dorado and the Corps indicate that an alternative approach will be developed if they don’t get a Corps’ permit and that would remove any “but for” analysis. Base on my conversation with Steve yesterday, I think he is looking for something to hang his hat on that doesn’t appear like we just arbitrarily about-faced our position. Want to work on that a bit, or we can just send it up to Steve as is and let him give us some indication of any additional language he would want?
Thanks for working on this,

- On Oct. 19, 2017, the attorney in DOI’s Solicitor’s Office who had been working with Mr. Spangle sent an email emphasizing that “we cannot be careful enough” (see figure below and Attachment 42).
On Oct. 24, 2017, the same attorney emailed a draft of the letter in which Mr. Spangle would officially reverse his decision with his comments. One comment indicated several points on which the two were continuing to struggle to adequately explain why the decision had been reversed, even saying “We need to address that and I am not sure how to do it,” (see figure below and Attachment 43).
On Oct. 25, 2017, an email from Mr. Spangle stated, “This is an unusual legal situation and we can’t be too diligent.” (see figure below and Attachment 44). In a subsequent email later that day, he thanked everyone for their work, referring to the decision reversal letter as an “SOB,” (see figure below and Attachment 45).
Finally, on Thursday, Oct. 26, 2017, Mr. Spangle sent an official letter to Army Corps in which he concurred with their determination that the mitigation action “may affect, but is not likely to adversely affect” the two threatened species (see Attachment 46).

The following Monday, Dep. Sec. Bernhardt sent himself a reminder to call Mr. Ingram. The subject of that call is currently unknown (see figure below and Attachment 47).

The Army Corps eventually re-instated the Clean Water Act permit for Vigneto in October 2018. However, after a Notice of Intent to sue was filed on Dec. 21, 2018,\(^\text{16}\) the Clean Water Act permit was suspended again on Feb. 15, 2019 (see Attachment 48).

**Public Reporting on and Reaction to Steve Spangle’s Whistleblower Account**

On April 29, 2019, a couple months after Army Corps suspended the Clean Water Act permit for Vigneto a second time, the *Arizona Daily Star* published a story outlining now-retired Field Supervisor Steve Spangle’s account in which he described the Aug. 31, 2017, phone call from attorney Peg Romanik in DOI’s Office of the Solicitor. Mr. Spangle claimed that Ms. Romanik advised him that “a high-level politico” believed he had made the wrong decision and he would be “wise to reconsider it.”\(^\text{17,18}\) In his own words, Mr. Spangle said, “I got rolled.” He noted that


this was the first time he had been subjected to political pressure of this kind in nearly three decades of service with FWS.\textsuperscript{19}

The story caught the attention of several news outlets, leading to extensive coverage including a CNN interview with Mr. Spangle.\textsuperscript{20} The public backlash against DOI was swift. Internal emails show that reactions to the reporting was mixed among DOI and FWS employees. A former colleague commended Mr. Spangle but showed concern about the potential for retaliation (see \textit{figure below and Attachment 49}).

An email from Ms. Romanik indicated her frustration with the level of media interest. Of note, her mention of “the Secretary” refers to Mr. Bernhardt, who had been recently confirmed as Sec. Zinke’s replacement. She pointed out that he had called her the previous workday and discussed the matter (see \textit{figure below and Attachment 50}).

Three days after Ms. Romanik sent that email, the Army Corps issued a letter to FWS highlighting Mr. Spangle’s recent allegations and inquiring as to whether those allegations changed FWS’ Oct. 26, 2017 decision (see \textit{Attachment 51}). FWS responded to that letter saying that they had re-


\textsuperscript{20} Scott Brustein, Drew Griffin & Audrey Ash, \textit{Whistleblower says he was pressured by Trump administration to reverse environmental decision}, CNN POLITICS (updated July 9, 2019), https://www.cnn.com/2019/07/08/politics/interior-department-arizona-development-bernhardt/index.html
evaluated the 2017 decision with “no regional or Washington DC headquarters review” and had not made any changes to their decision (see Attachment 52).

However, on June 28, 2021, FWS rescinded its 2017 concurrence based on an internal review of “the process by which that decision was made.” Army Corps once again suspended the permit on July 1, 2021.21

Mr. Ingram’s Personal Access to the Trump Administration

As evidenced by publicly available calendars for the Trump administration and other documents, Mr. Ingram, an independent businessman, had frequent access to high-ranking officials across the Trump administration, including DOI Secretaries Ryan Zinke and David Bernhardt, EPA Administrator Scott Pruitt, and other political appointees. This level of personal access to political appointees raises questions about Mr. Ingram’s level of influence in the Trump administration.

The list below details some of Mr. Ingram’s known interactions with Trump administration officials. Given that his meeting with then–Dep. Sec. Bernhardt was not included on any publicly available calendars or travel documents, it is possible that additional meetings or other engagements remain unknown.

- May 2, 2017: Mr. Ingram attended a meeting with DOI Secretary Zinke titled, “Arizona Stakeholder Meeting” that was scheduled to be held in the Secretary’s Conference Room (see Attachment 53). Other listed attendees included Chief of Staff Scott Hommel and DOI Solicitor Daniel Jorjani, but not then–Dep. Sec. Bernhardt. The meeting description included, “USFWS and EPA involvement and actions providing legal support for environmental [sic] groups such as the Center for Biological Diversity and Earth [sic] Justice to use the ESA as a pretext under private legal claims to halt development in Cochise County, Arizona.” The land for the Vigneto development is located in Cochise County. Of note, after the Vigneto allegations were publicly reported, a spokesman for El Dorado publicly stated that Mr. Ingram’s only meeting with a DOI official about Vigneto was his breakfast meeting with Dep. Sec. Bernhardt in Billings, Montana.22

- June 1, 2017: Mr. Ingram emailed Vigneto-related documents to Scott Hommel, Chief of Staff to DOI Secretary Zinke, at Mr. Hommel’s personal email account. One of the attachments was a letter from Mr. Ingram to Secretary Zinke that said, “I have discussed

with you several times a situation we are having with the Service at a project of ours in Benson, Arizona,” (see Attachment 54).

Nov. 1–3, 2017: Mr. Ingram visited Washington, DC and attended several meetings with Trump cabinet-level members and senior officials, including EPA Administrator Scott Pruitt, Dep. Sec. Bernhardt, and Department of Housing and Urban Development Secretary Ben Carson. The meeting with Mr. Pruitt was held at the White House. Mr. Ingram’s travel schedule also included an “Exclusive Bell Tower Reception” and a “Partners Dinner” at the Trump Hotel. The itinerary included a list of cell phone numbers for cabinet members and top advisors, including Marty Obst, Senior Advisor to Vice President Michael Pence (see Attachment 55).

Jan. 3, 2018: Ben Cassidy, DOI’s Senior Deputy Director for External and Intergovernmental Affairs and a political appointee recently found by the DOI Office of the Inspector General to have violated his ethics pledge,23 emailed Dep. Sec. Bernhardt to make him aware of a Jan. 5 dinner with the Congressional Sportsmen’s Foundation that would be attended by Mr. Ingram. He also offered to arrange a private meeting with Mr. Ingram (see Attachment 56).

March 16, 2018: Mr. Ingram was named as a Council member at the first meeting of DOI’s International Wildlife Conservation Council. He joined the Conservation and Enforcement/Trafficking Committees (see Attachment 57).

April 4-5, 2018: Mr. Ingram visited Washington, DC, and held meetings with DOI Secretary Zinke, EPA Administrator Pruitt, and Dep. Sec. Bernhardt, among others. Scheduling correspondence indicates Ben Cassidy attempted to arrange a Lincoln Memorial tour for Mr. Ingram while he was in town (see Attachment 58).

May 25, 2018: Mr. Ingram’s Executive Assistant, sent an email to Ben Cassidy with the subject line, “Articles Mike told you about.” The articles included an op-ed by William Perry Pendley arguing for the pardon of Oregon ranchers and convicted arsonists Dwight and Steven Hammond (see Attachment 59). The Hammonds were pardoned less than two months later.24

Sept. 25, 2018: Mr. Ingram met with Ben Cassidy in Washington, DC about the International Wildlife Conservation Council.

Jan. 4, 2019: Mr. Ingram emailed Vigneto-related documents to Ben Cassidy at Mr. Cassidy’s personal email account (see Attachment 60).


Conclusion

Prior to the Trump administration, FWS staff and DOI legal staff agreed for years that formal consultation on Vigneto’s Clean Water Act permit was required under the Endangered Species Act. Once President Trump was elected, Vigneto’s developer, Michael Ingram, had access to high-ranking officials across the administration, including personal email addresses and cell phone numbers. In August 2017, Mr. Ingram had a breakfast meeting in Montana with then–Deputy Secretary Bernhardt. The breakfast meeting was not disclosed in public calendars or in documents produced to the Committee.

After the meeting and apparently at Dep. Sec. Bernhardt’s direction, Peg Romanik, a DOI attorney, handed down a directive to reverse FWS’ position, a process through which the primary decision-maker and whistleblower claimed he “got rolled” and deemed highly unusual. DOI career staff struggled to justify the about-face, claiming it created risks for the agency. Then, on Oct. 6, three things happened. The Army Corps officially announced the re-evaluation of the Clean Water Act permit; the developer and several others from Arizona made highly unusual out-of-cycle donations that day, and the days immediately prior and subsequent, totaling $241,600 to the Trump Victory Fund and the Republican National Committee; and Dep. Sec. Bernhardt held a meeting with Ms. Romanik, on an undisclosed topic. A few weeks later, FWS officially reversed its position regarding issuance of the Clean Water Act permit.

Together, these facts raise serious concerns about a potentially criminal *quid pro quo*. We therefore refer this matter to the Department of Justice and request further investigation and, if warranted, criminal charges.

We appreciate your attention to this important matter. Please contact the Oversight and Investigations Subcommittee staff at (202) 225-6065 should you have any questions about this request.

Sincerely,

Raúl M. Grijalva
Chair
Committee on Natural Resources

Katie Porter
Chair
Subcommittee on Oversight and Investigations
Committee on Natural Resources
cc: The Honorable Allen Dickerson, Chair, Federal Election Commission
    The Honorable Steven T. Walther, Vice Chair, Federal Election Commission
    The Honorable Shana M. Broussard, Commissioner, Federal Election Commission
    The Honorable Sean J. Cooksey, Commissioner, Federal Election Commission
    The Honorable James E. Trainor III, Commissioner, Federal Election Commission
    The Honorable Ellen L. Weintraub, Commissioner, Federal Election Commission
## APPENDIX 1

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<td>Other Federal Receipts (Dividends, Interest, etc.).</td>
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http://mature/resources.house.gov
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<td>(Total: $5,400)</td>
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Total Transfers: $5,400