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Committee on Natural Resources
Office of Oversight and Investigations

HOLDING INTERIOR WATCHDOG ACCOUNTABLE

Oversight of the Department of the Interior's Office of Inspector General

A Report by the Majority Staff

Office of Oversight and Investigations

Committee on Natural Resources

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This report has not been officially adopted by the Committee on Natural Resources
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EXECUTIVE SUMMARY

Since taking over as Acting Inspector General for the Department of the Interior (“Department”) in February 2009, Mary Kendall has sought to establish a more accommodating and cooperative approach for engaging with the Department, which was a distinct departure from the assertive, public calling to account style practiced previously by the Office of Inspector General (“IG”) during prior Administrations.

However, this approach has raised significant concerns, including among the IG’s professional career staff who are dedicated to performing objective and independent oversight of the Department, that Ms. Kendall has gone too far and has undermined the independence of the IG as envisioned under the Inspector General Act of 1978. Further complicating the matter is Ms. Kendall’s stated interest in being nominated for the permanent Inspector General position, which appears to have compromised her ability to be independent in holding the Department accountable.

For more than two years, the Committee on Natural Resources (“Committee”) has been conducting oversight of the IG, focusing initially on the IG’s 2010 investigation into the editing of a Department report by political appointees at the White House that incorrectly implied a moratorium on deepwater oil and gas drilling in the Gulf of Mexico was supported by peer reviewers. More recently, the Committee has expanded its oversight to include other matters handled during the time the IG has been without a permanent Inspector General.

The Committee has held a specific oversight hearing focused on the activities of the IG during Ms. Kendall’s tenure as Acting Inspector General, and the Committee’s majority oversight staff have reviewed thousands of internal IG and Department documents, spoken with several current and former IG staff, including the Acting Inspector General, and reviewed specific IG case files in preparation of this report.

This Majority Staff Report examines the IG’s handling of the moratorium report investigation and details several other examples where the IG, under Ms. Kendall’s and Chief of Staff Stephen Hardgrove’s leadership, has not pursued investigations involving political appointees or Administration priorities; has sought to handle problems within the Department quietly through informal means rather than formal investigations and reports issued to Congress and the public; and has not adequately documented the management of the IG’s investigations and operations.

The Committee’s oversight of the IG’s moratorium investigation has uncovered allegations that Ms. Kendall and Mr. Hardgrove directed staff not to obtain documents from or conduct interviews with all relevant witnesses, as had been done in other high-profile investigations. The Committee’s investigation has also obtained documents suggesting the appearance that IG management has attempted to

retaliate against the lead investigator who oversaw the IG's investigation into the editing of the moratorium report, either by involuntarily transferring him to another duty station or terminating his employment altogether.

The Majority Staff Report also describes how the Acting Inspector General, after several meetings with Deputy Secretary of the Interior David Hayes and other senior Department officials, initially softened a draft report critical of how the Department had established and operated several renewable energy programs before she decided not to finalize and publicly issue the report.

The Majority Staff Report also describes how IG management stopped short of investigating a scientific integrity matter that IG staff thought merited further inquiry, and did not pursue an investigation of potential ethics violations by a senior political appointee that had been publicized in a national newspaper.

Particularly troubling, the Majority Staff Report also describes two situations where Ms. Kendall appears to have given inaccurate and misleading answers at Committee hearings. The Committee's oversight has identified several troubling examples where the IG's actions and the Department's problems may not have been sufficiently documented.

In sum, Ms. Kendall's actions and approach for addressing Department problems, often through informal communications with senior Department officials, may be removing the deterrent effect formal IG investigations and reports have in preventing future fraud, waste, and abuse, while frustrating Congressional oversight of the Department and the IG itself.

PART 1 – HELP WANTED: Independence Required for an Inspector General

Acting Inspector General Mary Kendall¹ has sought to establish a more cooperative and accommodating working relationship with the Department of the Interior that stands in contrast to the more assertive oversight role performed during prior Administrations. The findings of this Majority Staff Report raise important questions about whether the Acting Inspector General’s approach has been too one sided in favor of the Administration, has been influenced by her interest in being nominated for the permanent Inspector General position, and has been inconsistent with the role of independent watchdog envisioned by Congress when it enacted the Inspector General Act almost 35 years ago and with how the job has historically been performed.

BACKGROUND: The Inspector General Act (“IG Act”) was enacted in 1978,² requiring the establishment of an independent watchdog function within federal departments and agencies, including the Department of the Interior. An Office of Inspector General is expected to conduct and supervise audits and investigations of the programs and activities of its respective department or agency; to provide leadership and recommendations to promote operational efficiency and effectiveness and to prevent fraud, waste, and abuse; and to inform the department or agency head and Congress of any problems related to the administration of such programs.³

The hallmark of an Inspector General is independence. Although the legislative history recognizes that an Inspector General and agency need to work closely and cooperatively toward the shared goal of efficient and effective government operation and management,⁴ the IG Act is designed to ensure an Inspector General

¹ Due to the constraints imposed by the Federal Vacancies Reform Act, 5 U.S.C. §§ 3345-3349d, on the time period for which an individual can serve in an acting capacity for a Presidential appointed, Senate confirmed position, Ms. Kendall is no longer serving as “Acting Inspector General” but has continued to lead the IG while continuing to serve in her permanent position as Deputy Inspector General. This Majority Staff Report refers to Ms. Kendall as “Acting Inspector General” for consistency and to avoid confusion.

² The Inspector General Act of 1978, Public Law 95-452, October 12, 1978.

³ Section 2 of the IG Act.

⁴ “To be truly effective, the Inspector General must have a close relationship with the Secretary, enjoy his confidence and respect, and be responsive to his concerns, both as to his specific assignments and as to the Inspector General’s overall function in the Agency. If the Agency head is committed to running and managing the Agency effectively and to rooting out fraud, abuse and waste at all levels, the Inspector and Auditor General can be

can operate with independence and objectivity separate from a department or agency's policymaking⁵ functions. The position of Inspector General is appointed by the President, subject to Senate confirmation, and is filled "without regard to political affiliation and solely on the basis of integrity and demonstrated ability" in several areas.⁶ An agency or department head is prohibited from interfering with the work of an Inspector General,⁷ and an Inspector General may be removed only by the President with notification to Congress.⁸

Under the IG Act, an Inspector General is authorized "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."⁹ An Inspector General is expected to keep the department head and Congress "fully and currently informed" of serious problems, abuses, and deficiencies related to department activities.¹⁰ In order to fulfill its mission, an Inspector General is authorized to request information and assistance from any Federal, state, or local agency,¹¹ and the head of the other Federal agency is expected to furnish such information and assistance insofar as it is practicable and allowable under the law.¹²

The Department of the Interior policy requires all Department employees to cooperate with Inspector General investigations and audits, including providing documents and other evidentiary material, or face disciplinary action.¹³ Furthermore, Secretary Salazar also issued a directive on April 20, 2010 to senior staff instructing them to cooperate with Inspector General investigations, including making available documents that may be covered by a privilege or protected from public disclosure by another law.

ACTING IG HAS SOUGHT ACCOMMODATION AND COLLABORATION

The Department's Office of Inspector General has been led by Deputy Inspector General Mary Kendall and Chief of Staff Stephen Hardgrove since February 2009, when President Obama appointed the Department's longstanding Inspector

his strong right arm in doing so, while maintaining the independence needed to honor his reporting obligations to Congress," S. Rept. 95-1071 (1978), at 9.

⁵ "Additionally, the legislation gives the Inspector and Auditor General no conflicting policy responsibilities which could divert his attention or divide his time; his sole responsibility is to coordinate auditing and investigating efforts and other policy initiatives designed to promote the economy; efficiency and effectiveness of the programs of the establishment," S. Rept. 95-1071 (1978), at 7.

⁶ Section 3(a) of the IG Act.

⁷ Id.

⁸ Section 3(b) of the IG Act.

⁹ Section 6(a)(1) of the IG Act.

¹⁰ Section 4(a)(5) of the Act.

¹¹ Section 6(a)(3) of the Act.

¹² Section 6(b)(1) of the Act.

¹³ Department Manual 355 DM 1 (09/28/07).

General, Earl Devaney, to serve as chairman of the Recovery, Accountability, and Transparency Board.¹⁴ Mr. Devaney retired in December 2011. Ms. Kendall has publicly expressed an interest in being nominated for the permanent Inspector General position.¹⁵

Whereas the IG historically was known for its assertive style in investigating prior administrations,¹⁶ Acting Inspector General Kendall has sought to establish a more collegial relationship with the Department.¹⁷ In describing her philosophy for dealing with the Department, Acting Inspector General Kendall has stated:

I have exercised all the independence and objectivity necessary to meet the OIG mission. I have elected to exercise this independence and objectivity in a way that maintains a healthy tension between the OIG and the Department we oversee. I believe, however, that independence and objectivity are not compromised by a respectful relationship with both the Department and the Congress, the two entities we are charged with keeping fully informed, pursuant to the IG Act. As a result, we have affected a great deal of positive change over the past three years, by working with the Department in a spirit of respect to achieve such change.¹⁸

This approach has not gone unnoticed at the Department. In testifying before the Committee on May 26, 2010, about the Department's response to the Deepwater Horizon incident, Deputy Secretary David Hayes applauded the approach taken by Acting Inspector General Kendall:

I will say that we have really enjoyed a very good professional relationship with the Acting Inspector General, and we in fact—she is working with us on a special safety oversight committee function moving forward for precisely this reason. It is very instructive to get reports of the Inspector General's office. **It is even, I think, more helpful to get the**

¹⁴ Greenwire, "IG expects the unexpected – and is rarely disappointed," June 21, 2011; available at <http://www.eenews.net/public/Greenwire/2011/06/21/2> (last accessed November 20, 2012).

¹⁵ Testimony of Mary Kendall, Committee of Natural Resources, Oversight Hearing on "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior," August 2, 2012, Unofficial Transcript at page 43. See also, USA Today, "Interior inspector defends impartiality in report probe," May 22, 2012; available at <http://usatoday30.usatoday.com/news/washington/story/2012-05-22/deepwater-drilling-report/55143864/1> (last accessed December 3, 2012).

¹⁶ New York Times, "A Zealous Watchman to Follow the Money," March 9, 2009; available at <http://www.nytimes.com/2009/03/10/us/politics/10devaney.html> (last accessed December 5, 2012).

¹⁷ Interview with senior manager in the IG's Office of Investigations, December 4, 2012; interview with senior office within the IG, November 14, 2012; interview with the team leader for the Office of Inspector General's renewable energy evaluation study (WR-EV-MOA-0017-2009), December 20, 2012.

¹⁸ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior," August 2, 2012, Unofficial Transcript, Pages 15-16.

input and experience of the Inspector General as we look going forward at new things we can do to avoid the problem so that we do not have those reports.¹⁹

The statement by the Deputy Secretary, who executes the President's policies as the second-ranking political appointee at the Department, is a reminder that the Acting Inspector General's more accommodating and cooperative approach may lead to some problems being addressed without formal IG investigative reports being issued, resulting in less transparency about potential problems within the Department and decreased accountability for both the Department and the IG. It is an approach that can benefit an Administration but not the Congress or the public they serve.

This approach also has not gone unnoticed by Ms. Kendall's own staff. One IG staff member summed up the problem with the Acting Inspector General's collaborative approach the following way: "[I]f we find problems and don't report them, we are not doing our job."²⁰

IG EMPLOYEE CONCERNS ABOUT INDEPENDENCE

As discussed elsewhere in this Majority Staff Report in more detail, the approach taken by Acting Inspector General Kendall and Chief of Staff Hardgrove has sometimes caused confusion and raised questions about the IG's role and independence among its own staff and outside of the Department. For example, Ms. Kendall agreed to serve, along with two senior political appointees, on the Outer Continental Shelf Oversight Safety Board, a body created by Secretary of the Interior Salazar in the days after the Deepwater Horizon accident to recommend policy "recommendations regarding interim measures that may enhance OCS safety and recommendations for improving and strengthening the Department's overall management, regulation and oversight of OCS operations."²¹ The Board was also responsible for providing oversight of the Minerals Management Service as it conducted a joint investigation with the Coast Guard into the Deepwater Horizon accident.²²

Ms. Kendall tasked the IG Office of Investigation's Central Region to assist the efforts of the OCS Safety Oversight Board, which issued recommended safety

¹⁹ Report No. 111-54, Oversight Hearing of the Committee on Natural Resources, "Outer Continental Shelf Oil and Gas Strategy and Implications of the Deepwater Horizon Rig Explosion: Parts 1 and 2," May 26-27, 2010, at page 58.

²⁰ See also, "Our former IG was not necessarily opposed to taking the Department to task on problems we found. My personal view ... our current head does not feel the same way." Interview with the team leader for the Office of Inspector General's renewable energy evaluation study (WR-EV-MOA-0017-2009), December 20, 2012.

²¹ April 30, 2010 Department of the Interior Press Release; <http://www.doi.gov/news/pressreleases/Salazar-Launches-Full-Review-of-Offshore-Drilling-Safety-Issues-during-Visit-to-Oil-Spill-Command-Centers-on-Gulf-Coast.cfm> (last accessed on December 5, 2012).

²² Id.

improvements on September 9, 2010. However, IG staff seemed unclear about their role in providing assistance to the OCS Safety Oversight Board.²³ During the time Ms. Kendall was serving on the OCS Safety Oversight Board and tasking IG staff to assist, the IG was also investigating edits made to a Department report issued May 27, 2010 that recommended a six-month offshore drilling moratorium and that suggested the moratorium had been reviewed and supported by peer reviewers when in fact it had not. Meanwhile, the IG was preparing its own report of recommendations to improve the safety of offshore drilling that was issued in December 2010.

In a June 13, 2010 email to Assistant Secretary Wilma Lewis, Acting Inspector General Kendall acknowledged the difficulties IG staff were having with the IG's involvement: "The circumstances certainly call for a coordinated, cooperative effort, and we are fully prepared to work closely with the Dept on this matter. While it is still a somewhat foreign concept to our staff, Steve [Hardgrove] and I are committed to making this work as smoothly and effectively as possible."²⁴

Ms. Kendall herself has recognized the apparent conflict in serving on the OCS Safety Oversight Board, while also overseeing the IG's investigation into the editing of the drilling moratorium language and development of its own offshore safety recommendations, but did not think it warranted recusing herself. Ms. Kendall testified before the Committee that, "I recognize the potential for an apparent conflict of interest at the outset of my acceptance as a member of the Safety Oversight Board. But the Department was responding to a crisis. I did not think it appropriate for me to say, 'no, you go ahead and deal with this crisis, and I will just stand by and critique you if things go wrong.'"²⁵ However, under the IG Act, the Inspector General is expected to do just that: identify management problems and investigate fraud, waste, and abuse and report the IG's findings to the head of the Department *and* Congress.

²³ Interview with senior manager in the IG's Office of Investigations, December 4, 2012.

²⁴ June 13, 2010 10:34 am email from Mary Kendal to Wilma Lewis (CCs sent to Rhea Suh and Steve Hardgrove), Subject re: Memo to Secretary on Work of Safety Oversight Board. This sentiment is similar to one expressed in an June 12, 2010 8:40 pm email from Steve Hardgrove to Mary Kendall:

I understand the dynamics and that we did in fact agree to take the general topic areas identified by the Board to look at and to provide them with results of our collection as we progressed. ... The spirit of cooperation will remain, but perhaps this will clarify that we are providing assistance to the Board but not working for the Board. This point hits home throughout our organization and we need to be careful how our combined effort is articulated. ... **I have no problem working closely with the Dept [sic] on this or other issues. I probably did not realize that a majority of our staff is not yet prepared for it nor understands it.** (emphasis added)

²⁵ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior," August 2, 2012, Unofficial Transcript, Page 19.

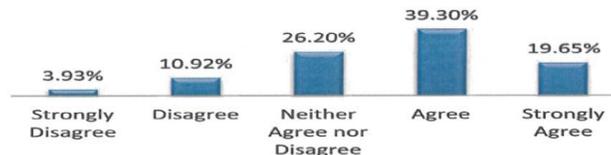
According to the IG’s employee satisfaction survey for 2012, only 59 percent of IG employees agreed or strongly agreed that “[t]he OIG conducts its work in a manner that is independent (free from improper influence) from the Department.”²⁶ According to the same survey results, a number of employees have raised questions about the IG’s independence and whether the IG has become overly deferential to the Department.



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3. The OIG conducts its work in a manner that is independent (free from improper influence) from the Department.

2012 Mean = 3.60
2011 Mean = 3.76
2010 Mean = 3.75*



* 2010 question was “The OIG produces work that is objective and independent.”

Image 1: IG Employee Satisfaction Survey

For example, one employee commented during the survey that, “I’ve become very concerned of late with the OIG’s independence and honesty. We go after people who ignore subpoena’s [sic] and stretch the truth (to put it nicely). Seems like our mission statement and vision are just words on paper and not something we should live by.”²⁷ In one troubling comment, an apparent member of the IG senior executive corps stated that the IG does seek permission from the Department on investigations: “Wake up and quit trying to to [sic] ‘get approval’ from DOI...we have job to do. The balance and independence model seems to be missing....the ‘appearance’ is there that the OIG has to ask the DOI is [sic] they can and actually [sic] ...us SES’r’s [sic] know it is the truth because you do ask DOI if it is ‘okay to look at things’... enough is enough. Get back to being independent and lets get ourselves some respect and demonstrate to the tax payers why we were hired.”²⁸

²⁶ IG 2012 Annual Survey Results, page 8; available at http://www.peer.org/assets/docs/doi/10_9_12_IG_Survey_Results.pdf (last accessed on December 5, 2012).

²⁷ IG 2012 Annual Survey Results, page 9; available at http://www.peer.org/assets/docs/doi/10_9_12_IG_Survey_Results.pdf (last accessed on December 5, 2012).

²⁸ Id.

Another employee commented, “Good luck....there is a balance which I know is tried here....but it seems the scales have shifted too far into the non independent world that we need to review ourselves again and get it back to being balance.”²⁹ Another employee admonished that the IG should be more willing to criticize the Department when needed: “Be careful with how much reports get softened to avoid ‘slamming’ the Department in the interest of maintaining a good relationship. If they did something horribly wrong, it isn’t our job to soften the blow.”³⁰

Ms. Kendall seems to have attributed the negative survey results and comments to the scrutiny from the Committee’s oversight of the IG, rather than genuine concerns held by employees that the IG’s independence has been compromised.³¹

MS. KENDALL’S INTEREST IN PERMANENT IG POSITION

On a number of occasions, Ms. Kendall has publicly expressed interest in being appointed by the President to serve as the permanent Inspector General for the Department. At the Committee’s August 2, 2012 oversight hearing, several members of the Committee expressed concern whether someone in Ms. Kendall’s position – who had expressed interest in the permanent IG position – could ever truly be independent in investigating the Administration in general or even the President in particular when that person would be dependent on the very same President for the nomination. For example, Representative Landry asked, “I believe that your testimony has impeached you, has impeached your character. Because earlier you said that, sure, you know, you are interested in the job of the Inspector General, because you are an interim, and you need the President to appoint you if you want to get to that job. Why simply did you not just say, ‘You know what? I am interested in taking this job, Mr. President. Maybe you should appoint someone in the interim, while I go out and I lobby for that job?’”³²

In response to these questions, Acting Inspector General Kendall sought to minimize any concerns about the inherent potential for a conflict of interest resulting from an acting Inspector General also wanting to be considered for the permanent position. Ms. Kendall testified that she wanted to be appointed to the permanent Inspector General position because she wanted “to do this for the OIG, as an organization,

²⁹ Id.

³⁰ IG 2012 Annual Survey Results, page 103; available at http://www.peer.org/assets/docs/doi/10_9_12_IG_Survey_Results.pdf (last accessed on December 5, 2012).

³¹ September 19, 2012, memorandum from Ms. Kendall to All IG Employees regarding “OIG Employee Survey – 2012”; available at http://www.peer.org/assets/docs/doi/10_9_12_Memo_from_IG.pdf (last accessed on December 5, 2012).

³² Questions from Representative Landry, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, Unofficial Transcript, Page 75; see also questions from Representative Fleming, Id. at pages 43-46.

certainly not because I am having a really great time.”³³ She added that, “You know, there is a potential for conflict of interest, perhaps, here. But I have seen many of my colleagues rise from the Deputy IG to the position of IG without conflict.”³⁴

Ms. Kendall’s decision to serve on the OCS Safety Oversight Board and the other actions described elsewhere in this report have raised important questions about her judgment and suitability to serve as the permanent Inspector General. For example, Chairman Hastings has stated:

It is very difficult to understand how you cannot see how the dual roles are in conflict. You are supposed to be the independent and objective investigator. You stated that in your statement. But when you are participating in meetings or conference calls, and receiving draft documents on these very same issues that your office may be asked to investigate – and, of course, then did investigate – it is clear your primary function was compromised. That you did not see this participation is an apparent conflict of interest, or something that would raise questions about your independence, it is that actions or those actions that trouble me the most.³⁵

In addition, the environmental whistleblower advocacy group Public Employees for Environmental Responsibility (“PEER”) has expressed concern about the independence of Ms. Kendall in particular and her suitability for the permanent Inspector General position. In commenting on the IG employee survey results, PEER Executive Director Jeff Ruch stated, “As an acting IG, Mary Kendall’s tenure depends upon pleasing the very people she is supposed to investigate. As a result, this watchdog is not just on a very tight leash, it is on a choke chain. To be effective and remain independent, an IG must be willing on a daily basis to get canned or resign if the mission is compromised.”³⁶ A former official with the Project on Government Oversight also told *USA Today*, “It raises the potential for conflict, especially if she would put her name in for IG. Her job prospects are captive to the goodwill of the

³³ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, Unofficial Transcript, Page 44.

³⁴ *Id.*

³⁵ Chairman Hastings, Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, Unofficial Transcript, Pages 18-19.

³⁶ October 9, 2012 press release from Public Employees for Environmental Responsibility; available at <http://www.peer.org/news/news-releases/2012/10/08/rising-doubts-on-independence-of-interior-inspector-general/> (last accessed December 5, 2012). Separately, PEER has been also critical of Mr. Devaney’s tenure as the Department’s Inspector General. See, *New York Times*, “A Zealous Watchman to Follow the Money,” March 9, 2009; <http://www.nytimes.com/2009/03/10/us/politics/10devaney.html> (last accessed December 5, 2012).

administration. If she releases something that makes political waves, they may not appoint her.”³⁷

SUMMARY: As this Majority Staff Report demonstrates, Acting Inspector General Kendall’s approach to working with the Department in such a collaborative manner was not isolated to her service on the OCS Safety Oversight Board. The Committee’s oversight of the IG during Ms. Kendall’s tenure as Acting Inspector General has identified numerous examples where the IG chose to inform the Department informally of management issues or potential fraud, waste, or abuse rather than conduct a full-scale investigation into the potential problem or wrong-doing. Although Acting Inspector General Kendall has explained such an approach has effectuated positive results and improved the Department’s operations, this approach has also had the effect of minimizing public awareness of and accountability for problems at the Department and frustrating Congressional oversight of the Department and the IG.

³⁷ USA Today, “Interior inspector defends impartiality in report probe,” May 22, 2012; available at <http://usatoday30.usatoday.com/news/washington/story/2012-05-22/deepwater-drilling-report/55143864/1> (last accessed December 3, 2012).

PART 2 – MORATORIUM INVESTIGATION: IG’s Report Dogged by Questions

For more than two years, the House Natural Resources Committee has been conducting oversight of the Department’s decision to impose a moratorium on offshore drilling after the Deepwater Horizon accident and the editing of a Department report that incorrectly suggested that the peer reviewers supported the moratorium decision. However, more recently the Committee has also conducted oversight of the IG’s handling of an investigation into the same Department report. The Committee has sought to conduct its oversight of these matters in a deliberate fashion that followed the facts where they have led. This report seeks to let those facts speak for themselves.

BACKGROUND: On April 20, 2010, the Macondo well located approximately 50 miles from the coast of Louisiana in the Gulf of Mexico experienced a blowout that caused explosions and a fire aboard the Deepwater Horizon offshore drilling rig, resulting in the tragic loss of 11 lives. The drilling rig sank on April 22, 2012, and the uncontrolled well released oil into the Gulf of Mexico for 12 weeks before it was capped.

In the days immediately after the disaster, the Department of the Interior and the Department of Homeland Security launched a joint investigation team (“JIT”) into the causes of the incident. In addition, on April 30, 2010, the President called upon Secretary Salazar to issue within 30 days a report recommending what, if any, additional safety measures should be implemented, and Secretary Salazar issued a Secretarial Order³⁸ establishing the Outer Continental Shelf (“OCS”) Safety Oversight Board.

ACTING IG’S ROLE IN RESPONSE TO THE DEEPWATER HORIZON TRAGEDY

The Secretary appointed Wilma Lewis, the Assistant Secretary for Land and Minerals Management, Rhea Suh, the Assistant Secretary for Policy, Management, and Budget, and Mary Kendall, the Acting Inspector General, to develop policy recommendations on behalf of the OCS Safety Oversight Board. The OCS Safety Oversight Board was tasked with providing oversight of the Department’s work on the JIT; “[p]roviding recommendations regarding interim safety measures that may

³⁸ Secretarial Order No. 3298, “Establishment of the Outer Continental Shelf Safety Oversight Board,” issued April 30, 2010.

enhance OCS safety”; and making policy recommendations to improve and strengthen the overall management, regulation, and oversight of OCS operations.³⁹

On May 14, 2010, Secretary Salazar formally requested the IG to conduct a separate review to determine whether there were deficiencies in the Minerals Management Service’s regulations and policies that needed to be changed to improve offshore drilling safety.

In response to the President’s directive, the Department issued on May 27, 2010 a report entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf”⁴⁰ (“30-day Safety Report” or “Drilling Moratorium Report”). The Executive Summary to the 30-day Safety Report contains a “recommendations” section that outlines a number of technical changes that could be imposed to increase the safety of offshore drilling.

Immediately after the list of technical recommendations, the Executive Summary states:

The Secretary also recommends temporarily halting certain permitting and drilling activities. First, the Secretary recommends a six-month moratorium on permits for new wells being drilled using floating rigs. ... The Secretary further recommends an immediate halt to drilling operations on the 33 permitted wells, not including the relief wells currently being drilled by BP, that are currently being drilled using floating rigs in the Gulf of Mexico. Drilling operations should cease as soon as safely practicable for a 6-month period.⁴¹

The Executive Summary then states: “The recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering. Those experts, who volunteered their time and expertise, are identified in Appendix 1. The Department also consulted with a wide range of experts from government, academia and industry.”

The Secretary issued a directive on May 28, 2010 imposing the moratorium recommendations contained in the 30-day Safety Report, and the Department then promptly issued a Notice to Lessees and Operators of Federal Oil and Gas Leases informing that new “deepwater” applications would not be considered and letters to the 33 individual operators of permitted wells notifying them to suspend activities.

³⁹ Id. at section 4(c).

⁴⁰ Report available at:

<http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598> (most recently accessed on December 6, 2012). The 30-day Safety Report itself does not explain how the OCS Safety Board contributed to or participated in its development. However, the 30-day Safety Report does refer, on page 30, to the OCS Safety Oversight Board, explaining that it “reviews and oversees OCS operations to support reasoned and fact-based recommendations for potential improvements.”

⁴¹ Id.

PEER REVIEWERS COMPLAIN ABOUT MORATORIUM LANGUAGE

Almost immediately after the issuance of the 30-day Safety Report, some of the technical experts who had peer reviewed the report objected that the Executive Summary language implied they had supported the Secretary's moratorium recommendation when, in fact, they did not. In an undated letter to Louisiana Governor Bobby Jindal and members of the Louisiana Congressional delegation, believed to have been sent and publically released on or about June 1, 2010, eight technical experts who had reviewed the draft 30-day Safety Report stated, "A blanket moratorium is not the answer. It will not measurably reduce risk further and it will have a lasting impact on the nation's economy which may be greater than that of the oil spill."

On June 2, 2010, Deputy Secretary David Hayes issued letters to the technical experts stating, "[W]e did not mean to imply that you also agreed with the decision to impose a moratorium on all new deepwater drilling." The letter added, "We regret any misunderstanding or confusion related to the inclusion of the recommendation to impose a 6-month moratorium on all new deepwater wells in the executive summary of the final report." Secretary Salazar also hosted a conference call and a follow up meeting in mid June to hear directly from the peer reviewers about their concerns on the moratorium.

On June 7, 2010, nearly 40 oil and gas drilling, exploration, and production companies filed suit in U.S. District Court for the Eastern District of Louisiana⁴² seeking an injunction against the Department's moratorium actions and a declaration that the Department had acted arbitrarily and capriciously in violation of the Administrative Procedure Act.⁴³

CONGRESS REQUESTS IG INVESTIGATION

Senator Vitter and Representative Scalise, both from Louisiana, sent a letter to the Department's IG on June 16, 2010, requesting that it "identify when and how the modification to the [Drilling Moratorium Report] occurred, and if there were any violations of law as it relates to the Information Quality Act."⁴⁴

At the Committee's June 17, 2010 Subcommittee on Energy and Mineral Resources' oversight hearing on the Minerals Management Service, then Subcommittee Ranking Member Lamborn asked Acting Inspector General Kendall whether the IG, given its past investigations of scientific integrity issues, was investigating the

⁴² *Hornbeck Offshore Services, et. al, v. Salazar, et al.*, 2:10-cv-01663 (J. Feldman).

⁴³ 5 U.S.C. §§ 551-559.

⁴⁴ Section 515 of the Consolidated Appropriations Act, 2001 (Pub.L. 106-554), enacted December 21, 2000. Commonly known as the Information or Data Quality Act, Section 515 requires the Office of Management and Budget to issue guidelines to ensure that the information disseminated by Executive Branch agencies them is of high quality, objectivity, utility, and integrity.

circumstances surrounding the editing of the Drilling Moratorium Report. Ms. Kendall responded by stating:

Congressman Lamborn, we have not. I understand right now that the 60-day moratorium is the issue of a lawsuit brought against the Department by industry. It has been the Office of Inspector General's practice for as long as I have been with the office that when a matter is in another forum, such as a Federal District Court, unless there is a compelling need for us to get involved and, in this case, we have not heard from either of the parties—either the Department or the industry—we would not investigate that. I think it would be inappropriate.

I mean, I have heard all the things that you have itemized here. **I was not involved in the process of developing that report, and I think it would be inappropriate for me to comment on it.**⁴⁵ (Emphasis added).

Congressman Lamborn followed up by adding: "And by the way, I didn't want to make any suggestion that you were involved. In fact, it is good that you are not so that you can be a disinterested, objective observer because there needs to be an investigation." After additional questioning from Congressman Lamborn, Ms. Kendall agreed that the IG *could consider* opening an investigation into the editing of the Drilling Moratorium Report.

The District Court hearing the *Hornbeck* litigation issued an injunction against the Department on June 22, 2010. The Department immediately appealed the order, and on July 8, 2010, a panel of the U.S. Court of Appeals for the Fifth Circuit denied the government's request to stay the District Court's order. The Department then took steps on July 12, 2010 to rescind the May 28 moratorium directive and issue a new one in its place. Those actions were also challenged in court.⁴⁶

On July 20, 2010, then Ranking Member Hastings, Congressman Lamborn and five other members of the Committee sent a follow up letter to the IG that noted the Department's handling of the moratorium severely undermined the public's trust that the Department's actions were based on sound science, explained how the moratorium decision would result in considerable economic harm throughout the Gulf region and financial waste at the Department, and requested the IG "open an investigation into the [peer reviewer] allegations and the decisions made associated with this 30-Day Safety Report."

⁴⁵ Serial Report No. 111-58, Subcommittee on Energy and Natural Resources oversight hearing, "The Deepwater Horizon Incident: Are the Minerals Management Service Regulations Doing the Job?" June 17, 2010, at page 31; available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg56979/pdf/CHRG-111hrg56979.pdf> (last accessed December 6, 2012).

⁴⁶ For a more detailed discussion of the legal challenges to the moratorium decision, please see the November 27, 2012 decision by the U.S. Court of Appeals for the Fifth Circuit in *Hornbeck Offshore Services, et. al, v. Salazar, et. al*, No. 11-30936, Slip Opinion at pages 3-7.

On July 21, 2010, Acting Inspector General Kendall sent a letter to Ranking Member Hastings and the other Members who signed the July 20 letter indicating that the IG “has, in fact, been conducting an investigation into these allegations. When we have completed the investigation, we will make the results available to the public. We will ensure that you, and the other members of Congress who made a similar request, are provided a copy of the results of our investigation directly.”

The OCS Safety Oversight Board issued its report and recommendations to the Secretary on September 1, 2010,⁴⁷ and the report was released to the public a week later.

The IG issued its report into the editing of the Drilling Moratorium Report on November 8, 2010. During the course of its investigation, the IG interviewed three of the technical experts who had objected to the moratorium language in the Executive Summary and three current or former Department officials involved in the drafting, review, and editing of the Drilling Moratorium Report. It also obtained a small number of emails and several versions of the draft Drilling Moratorium Report and Executive Summary from Counselor to the Secretary Steve Black and his special assistant, Neal Kemkar, who had the lead in drafting the report and working with the White House to get it finalized. The 8-page IG report summarizes the witness statements and documents obtained by the IG during the course of its investigation and lists 17 attachments, including formal witness interview summaries and copies of emails between Mr. Black and a White House official.

According to the IG report:

All DOI officials interviewed stated that it was never their intention to imply the moratorium was peer reviewed by the experts, but rather rushed editing of the Executive Summary by DOI and the White House resulted in this implication. After reviewing different drafts of the Executive Summary that were exchanged between DOI and the White House prior to its issuance, the OIG determined that the White House edit of the original DOI draft Executive Summary led to the implication that the moratorium recommendation had been peer reviewed by the experts.⁴⁸

On December 7, 2010, the IG issued a report of its findings and recommendations for improving the regulation of offshore oil and gas drilling, building upon the IG’s work contained in the OCS Safety Oversight Board’s September 2010 report.

⁴⁷ Outer Continental Shelf Safety Oversight Board Report to the Secretary of the Interior Ken Salazar; available at: <http://www.doi.gov/news/pressreleases/upload/OCS-Safety-Oversight-Board-Report.pdf>

⁴⁸ November 8, 2010, Department of the Interior Office of Inspector General Investigative Report of Federal Moratorium on Deepwater Drilling, Synopsis, Page 1.

ACTING IG REFUSES TO COMPLY WITH DOCUMENT REQUEST AND SUBPOENA

On April 25, 2011, Committee Chairman Hastings and Energy and Mineral Resources Subcommittee Chairman Lamborn sent separate letters to Secretary Salazar and Acting Inspector General Kendall requesting information about the moratorium decision and 30-day Safety Report and, in the case of the letter to Ms. Kendall, about the IG's investigation. On May 11, 2011, Acting Inspector General Kendall sent a letter providing a copy of its November 2010 report and Attachments 1 through 11.

However, Ms. Kendall stated that the IG was unable to provide attachments 12 through 18 based on a claim, articulated by the Department's Deputy Solicitor Art Gary to the IG, that those six attachments "reflect or constitute predecisional and deliberative interagency communications relating to the manner in which the 30-Day Report was finalized, and thus raise important confidentiality interests of the Executive Branch." According to Ms. Kendall's letter, Mr. Gary had conveyed this position directly to a different Congressional committee.

Ms. Kendall's May 11 letter also clarified that the IG's 2010 investigation had been "unable to independently conclude whether the implications contained in the 30-Day Report were intentional or not."

On August 1, 2011, another letter was sent to Acting Inspector General Kendall seeking clarification on whether the IG had additional documents responsive to the Committee's original April 25 request. Acting Inspector General Kendall responded on August 17, 2011, explaining that the IG did in fact have additional documents: it had identified a total of 47 documents responsive to the Committee's April 25 request. In addition to the copy of the report and 11 attachments provided with the May 11 response, the IG was providing with its August 17 letter copies of 28 additional documents, including a copy of an interview transcript. However, Ms. Kendall said the IG was unable to provide seven more documents (in addition to the six previously withheld ones, for a total of 13) that the Department had articulated a confidentiality interest in.

A follow up letter was sent to the IG on April 6, 2012, seeking an update of any steps taken since the November 2010 report to further investigate the editing of the Drilling Moratorium Report, and requesting copies of emails and others documents from the two IG investigators who worked on the case, Senior Special Agent Richard Larrabee and Program Integrity Division Director Harry Humbert, created between May 27, 2010 and the date of the letter.

A subpoena was issued to the Acting Inspector General on April 12, 2012, seeking copies of the 13 documents she was withholding from the Committee.⁴⁹

On April 18, 2012, the IG sent a letter stating that Acting Inspector General Kendall was declining to comply with the Committee's duly authorized and issued subpoena and referring the Committee to the Department for production of the relevant documents. The letter also stated that the IG's decision was based on a long-standing protocol within the Department, and its respect for the Department's confidentiality claim helps promote "the free flow of information to the IG and allows us to execute our oversight responsibilities to the fullest extent possible under the IG Act."

Ironically, the IG letter added, "One result of this arrangement is that oversight committees such as yours *have the benefit of truly probing OIG reports* that are based on examination of all relevant Department information, even information that may be subject to a cognizable claim of privilege."

NEW QUESTIONS ABOUT ACTING IG'S CONFLICTING ROLES

In its April 24, 2012, response to the Committee's April 6 letter, the IG stated it had not conducted any further investigations into the editing of the Drilling Moratorium Report since the November 2010 report was issued. The IG response also provided copies of Mr. Larrabee's and Mr. Humbert's documents. Acting Inspector General Kendall, IG Chief of Staff Hardgrove and other senior IG staff met with Chairman Hastings and Committee staff on April 26, 2012 to discuss the IG's refusal to comply with the April 12 subpoena and the Committee's concerns about how the IG handled its 2010 investigation. The Committee majority staff also interviewed the IG's lead investigator who worked on the moratorium case on April 30, 2012.⁵⁰

Given the significant and ongoing concerns into the IG's investigation, a letter was sent to the IG on May 2, 2012 requesting documents from Acting Inspector General Kendall, Mr. Hardgrove, and seven other IG officials about the IG's investigation into the Drilling Moratorium Report. The IG began providing the requested documents, on a rolling basis, on May 16, 2012.

Chairman Hastings sent a letter on May 10, 2012 reiterating the Committee's position that the IG was obligated, absent a legitimate assertion of Executive Privilege, to comply with a duly authorized and issued Congressional subpoena for

⁴⁹ On March 28, 2012, the Committee voted 23-17 to authorize Chairman Hastings to issue subpoenas *duces tecum* in two oversight matters, including the investigation into the editing of the Drilling Moratorium Report. A record of the authorization is available at <http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=288827> (last accessed on December 12, 2012). In addition to the April 12 subpoena to Acting Inspector General Kendall, a separate subpoena *duces tecum* was issued to Secretary Salazar on April 3, 2012 for the same 13 documents covered by the IG subpoenas, as well as documents from five Department officials. The Department has not fully complied with that subpoena.

⁵⁰ The lead investigator informed his management of the interview in an April 30, 2012 3:05 pm email.

documents in its custody. Simply put, the letter stated the document handling protocols established by the IG and the Department were not an appropriate justification for the IG's refusal to comply.

Following up on questions raised by the recently provided documents, including about the accuracy of Ms. Kendall's testimony before the Committee in June 2010, another letter was sent on May 22, 2012 to the IG requesting additional documents about any communications between Ms. Kendall and senior Department officials involving the Drilling Moratorium Report, Ms. Kendall's service on the OCS Safety Oversight Board, and Ms. Kendall's June 17, 2010 appearance before the Committee.

The Committee sent a letter to Acting Inspector General Kendall on June 25, 2012, expressing concern about the appearance that certain management and personnel decisions under consideration at the IG were being considered in retaliation against the senior special agent who led the investigation into the Drilling Moratorium Report and who had engaged in protected whistleblower communication with Congress. In particular, the letter requested information about plans under consideration to reassign or transfer any employees to the IG's Western Region Office in Sacramento, including employees in domicile locations such as the specific senior special agent who had worked on the moratorium investigation and raised concerns to his supervisors about how the case was managed.

Acting Inspector General Kendall responded on June 27, 2010 to questions about her role on the OCS Safety Oversight Board and the accuracy of her June 17, 2010 testimony, denying that her independence had been compromised by her service on the OCS Safety Oversight Board and arguing that at no time did she participate in the development of the 30-day Safety Report.

On July 26, 2012, Acting Inspector General Kendall was invited to testify on August 2, 2012, at a full Committee hearing titled, "Oversight of the Actions, Independence and Accountability of the Acting Inspector General of the Department of the Interior." Ms. Kendall was informed that she should be prepared to answer questions on her role overseeing IG's investigation into the Drilling Moratorium Report, the IG's response to the Committee's April 12 subpoena, the effectiveness of an Inspector General in an Acting capacity, and other matters.

On July 31, 2012, Acting Inspector General Kendall sent a letter providing documents and responding to the Committee's whistleblower retaliation concerns, stating she personally and the IG as an organization are "fully aware" of whistleblower protections, that no decision had been made on whether to transfer an employee to the regional office in Sacramento and, therefore, no specific employee had yet been identified for the targeted reassignment.

Ms. Kendall testified before the Committee at its August 2, 2012 oversight hearing,⁵¹ answering questions about her role on the OCS Safety Oversight Board, her handling of the IG's moratorium investigation, and the IG's handling of ethics and scientific integrity complaints, among other topics.

FINDINGS: During the course of the Committee's investigation of the Department's economically devastating moratorium decision and the manipulation of the peer review language in the Drilling Moratorium Report's Executive Summary, the Committee has obtained documents from the Department and the IG, heard from the Acting Inspector General and other Department officials, and conducted formal interviews and off-the-record discussions with several current and former IG staff members.

The Committee's investigation has raised troubling questions about the Acting Inspector General's, and the IG Chief of Staff's, conduct in overseeing the IG's investigation into the Drilling Moratorium Report while at the same time serving on a Departmental policy board, the accuracy and completeness of the Acting Inspector General's testimony before the Committee on two occasions, and the IG's response to concerns raised by the senior special agent who led the IG's moratorium investigation. In addition, the Acting Inspector General has displayed contumacious conduct in refusing to comply with a duly authorized and issued Congressional subpoena. This Majority Staff Report outlines the findings of this investigation.

ACTING IG'S CONFLICTING ROLES RAISES MANY QUESTIONS

Acting Inspector General Kendall has argued, in testimony⁵² before and correspondence⁵³ with the Committee, that she was not involved in developing the 30-day Safety Report. The information obtained by the Committee during the course of its investigation raises significant questions about the accuracy and completeness of this statement and other testimony before the Committee.

⁵¹ The Committee held a second oversight hearing on the Drilling Moratorium Report and other topics on September 13, 2012. The Committee heard testimony from two Department officials who had worked on the Drilling Moratorium Report, Neal Kemkar, Special Assistant to the Counselor to the Secretary, and Mary Katherine Issue, former Deputy Director of the Minerals Management Service. Mr. Kemkar and Ms. Issue had been issued separate subpoenas *duces tecum* prior to the hearing. They did not comply with these duly authorized and issued Congressional subpoenas.

⁵² Serial Report No. 111-58, Subcommittee on Energy and Mineral Resources oversight hearing, "The Deepwater Horizon Incident: Are the Minerals Management Service Regulations Doing the Job?" June 17, 2010, at page 31; available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg56979/pdf/CHRG-111hhrg56979.pdf> (last accessed December 6, 2012); see also, Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior," August 2, 2012, unofficial transcript at page 30.

⁵³ June 27, 2012 letter from Acting Inspector General Kendall to Chairman Hastings.

Acting Inspector General Kendall was appointed by Secretary Salazar to serve on the OCS Safety Oversight Board on April 30, 2010, along with the Assistant Secretary for Lands and Minerals Management, Wilma Lewis, and the Assistant Secretary for Policy, Management, and Budget, Rhea Suh, both of whom are senior political appointees at the Department. According to an April 26, 2010 email obtained from the IG, the appointment appears to have been in the works for several days before the formal announcement. Ms. Suh wrote an email to Ms. Kendall that day with the subject line “whoops-plan b,” telling Ms. Kendall to “[a]ct really surprised. David or Wilma have the lead in talking to you about it! Sorry!” Ms. Kendall responded 10 minutes later, saying, “Got it!”⁵⁴

Although IG staff were aware of Ms. Kendall’s appointment,⁵⁵ it appears staff were in the dark about what Ms. Kendall was herself doing on the OCS Safety Oversight Board and how it related to the IG’s work and the Department’s work on the 30-day Safety Report.⁵⁶ This confusion is understandable.

According to an April 30, 2010 email from Ms. Lewis to Secretary Salazar, the members of the OCS Safety Oversight Board had already met and decided to focus on: “1) **proposals for interim measures**; and 2) oversight of, and periodic reports to you regarding, the MMS portion of the Joint Investigation. With respect to item 1, we are aware of the 30-day time period for your report to the President.” (Emphasis added) The Drilling Moratorium Report, drafted under Mr. Black’s direction and later investigated by the IG, was also focused on interim safety measures.

Similarly, Ms. Lewis wrote a May 2, 2010 email⁵⁷ to Counselor Black and MMS Deputy Director Mary Katherine Ishee⁵⁸ about the need for close cooperation: “Because the information needed for the interim measures report for the POTUS and related work tasked to the Oversight Safety Board is the same, we should make sure to coordinate our efforts to avoid duplication of time and resources. Please keep us in the loop as you schedule interviews and as you gather materials. We would like to have Board participation when you are meeting with MMS personnel, industry, experts, and other parties.” Mr. Black responded, “Agreed. Thanks Wilma.

⁵⁴ April 26, 2010 1:47 pm email from Mary Kendall to Rhea Suh, subject: “re: whoops – plan b.”

⁵⁵ April 30, 2010 email from Richard Larrabee to Acting Inspector General Kendall offering to assist the OCS Safety Oversight Board’s work if needed.

⁵⁶ Although the IG’s Central Region had been tasked with assisting the OCS Safety Oversight Board, it is unclear what staff understood the IG’s and Ms. Kendall’s roles to be in that effort. Interview with senior manager in the IG’s Office of Investigations, December 4, 2012: [“I don’t think that was communicated well, which may have led to some of the perceptions. ... I don’t think people generally knew what all she was doing with the Department. I didn’t have a good understanding of that.”]; see also, June 12, 2010 email from IG Chief of Staff Hardgrove to Acting Inspector General Kendall discussing edits to a draft memorandum from the IG to the other OCS Safety Oversight Board members: “I have no problem working closely with the Dept [sic] on this or other issues. I probably did not realize that a majority of our staff is not yet prepared for it nor understands it.”

⁵⁷ May 2, 2010 7:20 pm email from Wilma Lewis to Steve Black, Mary Katherine Ishee (CCs sent to Rhea Suh and Mary Kendall), Subject: Coordination on Interim Measures.

⁵⁸ Acting Inspector General Kendall was copied on the email.

See you tomorrow.” Also in a May 2, 2010 email, Deputy Secretary Hayes, current Chief of Staff Laura Davis, Mr. Black and other senior Department officials were provided a work plan for the OCS Safety Oversight by Ms. Lewis.

DOUBTS ABOUT CONGRESSIONAL TESTIMONY

Although Ms. Kendall has sought, in her statements and correspondence, to distance the work of the OCS Safety Oversight Board from the 30-Day Safety Report, these emails suggest the two functions were not just complementary but inextricably intertwined, dating to the very beginning of the Department’s work on developing interim safety recommendations.

Beginning on May 6, 2010, Ms. Kendall and others on the OCS Safety Oversight Board were provided outlines and early drafts of what became the Drilling Moratorium Report.⁵⁹ Mr. Black sent a copy of the then-current version of the draft recommendations to the members of the OCS Safety Oversight Board on May 11, 2010 and asked for “comments or questions.”

In addition, the Committee has obtained a calendar invitation for a May 25, 2010 meeting and conference call that was to include the peer reviewers, along with Ms. Kendall, Mr. Black, Ms. Lewis, Ms. Suh and other senior Department officials. The subject of this calendar invitation is listed as: “Follow up call with NAE Peer Review Panel (30-Day Safety Report attached).” A document titled “Interim Measures Report 100525 nk Final.pdf” was attached to the invitation.

If Ms. Kendall is correct, then Mr. Black must have been mistaken when he thanked Ms. Kendall for her “participation.” In an email chain dated May 28, 2010, Ms. Kendall wrote to Mr. Black requesting a copy of the letter Secretary Salazar sent to the President transmitting the Drilling Moratorium Report. The original email from Ms. Kendall states, in part:

We are launching teams next week to respond to the Secretary’s request that we [the IG] determine whether specific deficiencies in [Minerals Management Service] policies or practices exist that need to be addressed to ensure that operations on the [Outer Continental Shelf] are conducted in a safe manner protective of human life, health, and the environment. **We do not, however, want to duplicate effort that you have already made (your effort has been tremendously impressive, by the way!).** (Emphasis added).

Mr. Black responded by saying, in part: “And thanks for your kind words, Mary, and **for your participation in so many of the meetings and interviews leading up to this report.** I have attached the final 30-day report and the transmittal letter that went

⁵⁹ See May 6, 2010 email from Neal Kemkar to Wilma Lewis, Steve Black, Mary Katherine Ishee, Rhea Suh, and Mary Kendall.

to the White House yesterday. Please don't hesitate to call me if you have any questions.” (Emphasis added).

The email string ends with Ms. Kendall thanking Mr. Black and asking if the 30-Day Report and transmittal memorandum from Secretary Salazar can be shared with the IG team investigating MMS. Nowhere in the email string does Ms. Kendall object to how her role is characterized.

Just three weeks after the Drilling Moratorium Report was issued, Ms. Kendall testified before this Committee that, **“I was not involved⁶⁰ in the process of developing that report, and I think it would be inappropriate for me to comment on it.”⁶¹** (Emphasis added).

Representative Lamborn replied, “And by the way, I didn’t want to make any suggestion that you were involved. In fact, it is good that you are not so that you can be a disinterested, objective observer because there needs to be an investigation.”

In more recent correspondence with the Committee and in public statements, Ms. Kendall has modulated her position, stating that she “had no role in drafting the report” itself or the Executive Summary and was not an “active” participant in meetings where the draft report was discussed.⁶² However, those claims are qualitatively different than what Ms. Kendall testified to in June 2010: that she was “not involved in the process” of developing the 30-Day Safety Report. Ms. Kendall may not have been as actively involved in drafting or reviewing language for the report or arranging and attending meetings with the peer reviewers, especially compared to Mr. Black or other Department officials, but the fact remains that she was provided drafts and updates about the report throughout the process, was asked for her comments, and attended meetings with the peer reviewers where the near final version of the 30-Day Safety Report was discussed.

Even if Ms. Kendall’s personal participation at meetings was limited to being an “active listener,”⁶³ it stands to reason that she would have been privy to inside knowledge about how the Drilling Moratorium Report was developed and may

⁶⁰ Merriam Webster Online Dictionary defines the present tense of “involved” to mean “to engage as a participant”; available at: <http://www.merriam-webster.com/dictionary/involve> (last accessed February 19, 2013).

⁶¹ Serial Report No. 111-58, Subcommittee on Energy and Natural Resources oversight hearing, “The Deepwater Horizon Incident: Are the Minerals Management Service Regulations Doing the Job?” June 17, 2010, at page 31; available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg56979/pdf/CHRG-111hrg56979.pdf> (last accessed December 6, 2012).

⁶² Statement from Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, Unofficial Transcript, page 88; see also, USA Today, “Interior inspector defends impartiality in report probe,” May 22, 2012; available at <http://usatoday30.usatoday.com/news/washington/story/2012-05-22/deepwater-drilling-report/55143864/1> (last accessed December 3, 2012).

⁶³ USA Today, “Interior inspector defends impartiality in report probe,” May 22, 2012; available at <http://usatoday30.usatoday.com/news/washington/story/2012-05-22/deepwater-drilling-report/55143864/1> (last accessed December 3, 2012).

herself have been a fact witness who would have had information or access to documents that could have assisted the IG's own investigation. However, by all accounts, IG investigative staff were also unaware of Ms. Kendall's involvement.⁶⁴

The facts clearly show Ms. Kendall was "involved in the process" whereby the report was developed, contrary to her June 2010 testimony. Had Ms. Kendall provided a more fulsome answer to Representative Lamborn's question at the time, one that clarified her role on the OCS Safety Oversight Board, the Committee and the public may have had a better understanding of her potential conflict of interest, these concerns about the integrity and independence of the IG's investigation could have been prevented, and Ms. Kendall's candor and truthfulness likely would not be called into question now.

NEW QUESTIONS ABOUT CONGRESSIONAL TESTIMONY

In order to demonstrate her unfamiliarity with and further distance herself from the 30-day Safety Report, Ms. Kendall went so far as to testify at the August 2, 2012 oversight hearing that, "**I am almost embarrassed to say this, sir, but I have never read the 30-Day Report.**"⁶⁵

However, the facts also call this assertion – and the accuracy of Ms. Kendall's August 2012 testimony – into doubt.

In a May 26, 2010 email to the other members of the OCS Safety Oversight Board and other Department staff, Ms. Kendall discussed reading the 30-Day Safety Report in connection with her work on the Board, writing, "I will not be able to participate in tonight's call, but will have a revised draft document outlining what we (OIG) think remains on the to-cover list **after reading the 30-day report.** I'll bring the outline up momentarily." (Emphasis added)

⁶⁴ See for example, interview with senior manager in the IG's Office of Investigations, December 4, 2012.

⁶⁵ Statement from Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior," August 2, 2012, Unofficial Transcript, Page 86; see also questions from Representative Fleming, Id. at pages 43-46.

From: Mary Kendall
To: Cardinale, Richard
Cc: Holley, Amy; Rees, Gareth C; Diequez, Heather; Farquhar, Ned; Mussenden, Paul; Jacobson, Rachel; Suh, Rhea; Lassiter, Tracie L; Lewis, Wilma
Subject: Re: Safety Oversight Board - Conference Call Tomorrow
Date: 05/26/2010 05:11 PM

Rich and all - I will not be able to participate in tonight's call, but will have a revised draft document outlining what we (OIG) think remains on the to-cover list after reading the draft 30-day report. I'll bring the outline up momentarily. Mary

Mary L. Kendall
Acting Inspector General
Office of Inspector General
Department of the Interior
(202) 208-5745

Image 2: Kendall Email About Reading 30-Day Safety Report

This email, obtained from the IG, indicates Ms. Kendall was in the process of reading the draft 30-Day Safety Report in May 2010 and was familiar enough with its contents to determine how that document complemented the Board's efforts.

This stands in stark contrast to Ms. Kendall's testimony before the Committee in August 2012 that she had never read the 30-day Safety Report.

QUESTIONS ABOUT INTERFERENCE WITH IG'S INVESTIGATION

Internal IG documents obtained by the Committee suggest the IG took pains from the very start to avoid conducting a full-scale investigation into the editing of the Drilling Moratorium Report, as was called for in the June 16, 2010 letter from Senator Vitter and Representative Scalise, at the June 17, 2010 Subcommittee hearing by then Subcommittee Ranking Member Lamborn, and again in the July 20, 2010 letter from then Ranking Member Hastings and six others.

While testifying before the Committee on June 17, 2010, Acting Inspector General Kendall stated that the IG would not be conducting an investigation because the moratorium itself was the subject of litigation:

It has been the Office of Inspector General's practice for as long as I have been with the office that when a matter is in another forum, such as a Federal District Court, unless there is a compelling need for us to get involved and, in this case, we have not heard from either of the parties—either the Department or the industry—we would not investigate that. I think it would be inappropriate.⁶⁶

⁶⁶ Serial Report No. 111-58, Subcommittee on Energy and Natural Resources oversight hearing, "The Deepwater Horizon Incident: Are the Minerals Management Service Regulations Doing the Job?" June 17, 2010, at page 31;

According to internal IG documents, in the hours after the hearing, Ms. Kendall continued to resist conducting a full-scale investigation. In an email string, also dated June 17, 2010, between Ms. Kendall, IG General Counsel Delaplaine, and an IG staff attorney, the IG attorneys discuss drafting a response letter to Senator Vitter and Representative Scalise that would reiterate Ms. Kendall's testimony that the IG will not investigate further and clarifying that the moratorium was not discussed in the body of the 30-day Safety report, just the transmittal letter to the President and the Executive Summary.

Acting Inspector General Kendall agreed with this approach, responding by email on June 17, at 5:24 pm:

You understood correctly. My statement this morning [at the Subcommittee's hearing] was to the effect that 'it is our practice not to conduct an investigation if a matter is being addressed in another legal forum. Here, the moratorium issue is before the federal district court (we'll need to get details). Barring extraordinary circumstances, we would not investigate.' Looking at the Information Quality Act, I do not think it would be applicable here (we should discuss why), where by the Department's own admission, it did not intend to imply that the experts reviewed the moratorium issue, and apparently issued an apology. There are no legal consequences I can see for violating the Information Quality Act, either.

The IG attorneys circulated a draft response by email on June 21, 2010 that states, in part, "[t]he letter currently states that 'the OIG is not aware of any formal challenges to the Department's safety report' under the Information Quality Act's procedures. DOI has a specific process for 'affected persons' to challenge 'disseminated information' under the IQA. The congressional letter does not appear to qualify as such a challenge and I am not aware of any IQA challenges to the 30-day report, but I wanted to mention it since you [Ms. Kendall] would likely know better."⁶⁷

According to the IG's computerized case management system, the IG opened a case file for the moratorium investigation on June 22, 2010,⁶⁸ and assigned it to the Office of Investigation's Public Integrity Division to handle.⁶⁹ According to the IG's case

available at <http://www.gpo.gov/fdsys/pkg/CHRG-111hrg56979/pdf/CHRG-111hrg56979.pdf> (last accessed December 6, 2012).>

⁶⁷ June 21, 2010, 5:32 pm, email from Bruce Delaplaine to Kevin Laden, subject: re: Draft to Sen. Vitter & Rep. Scalise.

⁶⁸ The same day the Federal District Court hearing the Hornbeck litigation issued an injunction against the 6-month moratorium.

⁶⁹ The investigation was assigned case number PI-PI-10-0562-1. The lead investigator, Senior Special Agent Richard Larrabee, had previously worked in the Program Integrity Division but at the time was assigned to the Office of Investigation's Energy Investigations Unit based out of the Central Regional Office in Colorado. However the IG's investigation remained focused on the Department's compliance with the Information Quality Act for several more weeks.

management system, the lead investigator conducted interviews with several of the technical experts who had peer reviewed the 30-day Safety Report and with Mr. Black and Mr. Kemkar, who had prepared the draft and worked with the White House on the edits that led to the incorrect peer review language.

In her July 21, 2010 letter, Ms. Kendall informed then Ranking Member Hastings and Representative Lamborn that the IG was conducting an investigation into the allegations concerning the editing of the 30-day Safety Report and the moratorium decision itself. However, the records obtained by the Committee suggest that the IG's investigation, at the time of the July 21 letter, was focused on whether the Department had complied with the Information Quality Act and not a broader review of the moratorium decision itself or how the incorrect peer review language found its way into the final report.⁷⁰

However, it is unclear based on internal IG records that the IG took any additional investigative actions to broaden the scope of the investigation beyond the initial focus on the Information Quality Act.

FRUSTRATIONS WITH OBTAINING RELEVANT DOCUMENTS

One of the challenges apparently faced by the IG's investigators was obtaining documents that would shed light on why the peer review language was edited in order to verify witness statements. It appears that rather than obtain documents from the Department's email servers even before any interviews were conducted, or directly from the witnesses themselves, the investigators were directed to first seek them through alternative means, including the Department's Solicitor's Office, which was compiling an administrative record to defend the moratorium decision in court.

According to an internal IG case management system document, the lead investigator proposed on July 8, 2010, as the next step in the investigation, to conduct a broad centralized "review of all department personnel emails involved in drafting and reviewing the executive summary attached to the report that made the misrepresentation (for the one-week period prior⁷¹ to release of the executive summary) in order to help determine whether such misrepresentation was intentional or a mistake, as claimed by the Department." The lead investigator's plan also proposed interviewing department officials after the email search was conducted and then analyzing whether any laws such as the Information Quality Act were violated.

⁷⁰ The senior special agent overseeing the investigation was not made aware of the letter from then Ranking Member Hastings until July 30, 2010, when he discovered a copy of the letter on the internet. See July 30, 2010 7:50 am email from Richard Larrabee to Kris Kolesnik, Subject: House Cmttee Natural Resources Request for Investigation.

⁷¹ Had the investigators conducted a broad search for documents in the week before the 30-day Safety Report was issued on May 27, 2010, it is possible they would have identified the May 25, 2010 calendar entry showing Ms. Kendall had received a draft of the report and had been invited to a meeting with the peer reviewers where the report was discussed.

The lead investigator sent a follow up email to the Director of the Program Integrity Division, Harry Humbert, on June 9, 2010, expressing concern about the direction and scope of the investigation:

As we discussed, I think we as the DOI-OIG could be opening ourselves up to legitimate criticism (of bias) by not pursuing this investigation in a similar manner in which we would pursue an investigation of a lower level DOI employee. As you know, in order to be effective and thorough in any investigation, we need to take the same comprehensive approach with the 'higher level' investigations as we do with the 'lower level' investigations, and we have regularly made extensive use of the [centralized email retention database used by the Department] to obtain emails of DOI employees in pursuance of our investigations over the past 5 years.

The lead investigator was unable at that time to conduct a broad email search prior to any interviews with Department officials.⁷² Counselor to the Secretary Black was interviewed for almost 80 minutes on July 14, 2010 and, according to the lead investigator's notes and formal interview summary,⁷³ he told the investigators that the incorrect and misleading peer reviewer language was an accident caused by rushed editing. He also added that he had in his possession relevant documents, but they should be considered privileged because they concerned communications between the Secretary and the President.⁷⁴

At 3:36 pm on July 14, the lead investigator sent an email to Program Integrity Division Director Hubert asking, "**Why would I believe Steve Black** but not believe [a former Bush Administration official who was the subject of a separate IG investigation] whose emails we reviewed under an investigation requested by Secretary Salazar)? Both investigations concerned a 'policy decision' that was made where there wasn't any 'evidence of a cover-up'? – disturbed." (Emphasis added)

On July 15, 2010, the IG interviewed Neal Kemkar who, as Special Assistant to Mr. Black, interacted with the peer reviewers and helped coordinate the review and editing of the draft 30-day Safety Report. According to the lead investigator's notes

⁷² In interviews with Committee staff, several IG investigators have said the usual investigative process is to try to obtain emails first through a centralized source, then conduct an interview, followed by requesting documents from the witness to compare (for accuracy and completeness) against the documents previously obtained. However, in the April 26, 2012 meeting, IG Chief of Staff Hardgrove said such steps are resource intensive and time consuming and are not needed in every investigation, including the one into the Drilling Moratorium Report.

⁷³ According to the lead investigator, Mr. Black requested that the interview with the IG not be recorded for later transcription.

⁷⁴ In the April 26, 2012 meeting with Chairman Hastings, Acting Inspector General Kendall and Chief of Staff Hardgrove questioned why the investigators did not obtain documents directly from Mr. Black during the interview. The lead investigator has said they did not request documents at that time directly from Mr. Black based on directions from Ms. Kendall and Mr. Hardgrove. Interview with the IG's lead investigator into Drilling Moratorium Report, April 30, 2012.

and official interview summary, Mr. Kemkar said he had emails and documents reflecting who made the edits and when they were made.

Also on July 15, 2010, the lead investigator prepared a draft Report of Investigation (“ROI”), based on the witness interviews. The lead investigator noted in the case management system that the report could not be finalized until after relevant documents could be obtained and reviewed.

IG staff have said during interviews they generally are allowed to obtain relevant documents directly from a witness or from a centralized email search before and/or after a witness interview, and they could not remember another example where IG staff would be directed to obtain necessary information through secondary means such as an administrative record used in litigation as opposed to the directly from the witness or the original source of information.

The draft ROI described how the incorrect peer review language was the result of late night edits by the White House and that the Department witnesses interviewed (Mr. Black and Mr. Kemkar) had said there was no intent to mislead about the peer reviewers’ support of the moratorium. The lead investigator sent the July 15 draft ROI by email⁷⁵ to Program Integrity Director Humbert on July 19, 2010, explaining:

I am still awaiting for a copy of the Administrative Record of the litigation in Louisiana from [the Solicitor’s Office] in order to review drafts of the Executive Summaries; however, I am concerned that the drafts will not be able to clearly document which draft belongs to DOI versus the White House and at what time-frames the changes may have been made (and by whom). As we have discussed in depth, the only way to unequivocally identify these facts and time-frames is by conducting a thorough review of the email traffic between DOI and the White House on May 26 and the early morning hours of May 27, 2010, which has been denied by Steve [Hardgrove] and Mary [Kendall].

The email concluded by saying the draft Report of Investigation may need to be updated based upon a review of the *Hornbeck* litigation’s administrative record and receipt of any legal analysis by the IG’s attorneys on whether the Information Quality Act was violated.

IG’S NARROW FOCUS OBSCURES QUESTIONS ABOUT WHITE HOUSE INTENT

On July 21, 2010, an IG attorney sent by email⁷⁶ a draft legal analysis to the lead investigator, stating, “As we discussed, **it is possible that additional evidence could uncover a more intentional misrepresentation regarding the safety report as a**

⁷⁵ July 19, 2010 1:32 pm email from Richard Larrabee to Harry Humber, subject: PI-10-0526-I.

⁷⁶ July 21, 2010 9:37 am email from Kevin Laden to Richard Larrabee, cc to Bruce Delaplaine, subject: IQA Draft Legal Opinion –Kladen 7.20.10 (2).doc

whole, but the evidence currently developed does not appear to support such an interpretation.” (Emphasis added)

The lead investigator then sent an email⁷⁷ with an updated draft Report of Investigation, incorporating the draft Information Quality Act section from the IG attorney, to Deputy Assistant Inspector General Scott Culver, also on July 21, adding:

Also, as you will notice that the final section to the Details of Investigation section of the ROI is still outstanding because I am waiting to hear from [the Solicitor’s Office] when I can view their Administrative Record for different drafts of the Executive Summary on-line (I’ve been told it will be on-line later this week sometime). **As you know, I was directed to not ask for Secretary Counselor Steve Black’s email that contained the actual drafts sent to, and returned by the White House (even though he hold us he had them if we wanted them).** (Emphasis added)

Although the lead investigator had attempted to obtain relevant documents about the editing of the Drilling Moratorium Report from the Solicitor’s Office, as opposed to directly from the witnesses or from a centralized email search, even those documents were not immediately forthcoming. In a July 27, 2010, email⁷⁸ to Program Integrity Division Director Humbert, the lead investigator wrote:

Just called [the Solicitor’s Office] again yesterday in re the Administrative Record in order to get whatever drafts of the Executive Summary that may have been placed in the record. [The Solicitor’s Office] told me that they are still working on completing the final administrative record and they will let me know when it is placed on-line for all of the public to view.” The lead investigator added, “Seems a bit ironic to me that in conducting an internal OIG investigation, we have been directed to not secure vital documents pertinent to the investigation internally, but rather must wait for its public release in order to obtain documentation.

This did not sit well with Program Integrity Division Director Humbert, who wrote, “I want a name and phone number of the person you are dealing with at the [Solicitor’s Office]. We are NOT waiting until the public gets a copy before we are permitted to view it.”⁷⁹ The following day, Program Integrity Division Director Humbert sent a follow up email to the lead investigator, stating “I forwarded the issue with the [Solicitor’s Office] to Scott [Culver, Deputy Assistant Inspector General

⁷⁷ July 21, 2010 1:50 pm email from Richard Larrabee to Scott Culver, cc to Harry Humbert, subject: PI-PI-0562-I.

⁷⁸ July 27, 2010 8:59 am email from Richard Larrabee to Harry Humbert, subject: Re: Hey Rich.

⁷⁹ July 27, 2010 9:03 am email from Harry Humber to Richard Larrabee, subject: Re: Hey Rich.

for Investigations] yesterday who was to have addressed the concerns we have with John [Dupuy, Assistant Inspector General for Investigations].”⁸⁰

The lead investigator was then asked to update the IG’s case management system, which he did.⁸¹

<p>SA Larrabee has completed drafts of the ROI and Summary. OGC has completed their analysis of whether the facts and circumstances determined in the investigation may represent a violation of the Information Quality Act. The ROI cannot be finalized, however, until drafts of the Executive Summary have been obtained and reviewed. Counselor Steve Black said he had copies of the various drafts in his emails; yet we were directed to not obtain Black's emails, but rather try to obtain the drafts from the official Administrative Record SOL is preparing in relation to the moratorium litigation in Louisiana. According to SOL, however, they have not yet completed the Admin Record for release to the public.</p>	<p><u>07/28/2010</u></p>
<p>Interviews of Black and Kemkar have been completed and IARs have been drated. SA Larrabee will be starting to draft the ROI forthwith. An OGC analysis of the findings of the case in relation to the Information Quality Act has also been requested. SA Larrabee will additionally be starting to draft a summary of our findings in the style of the "Kalamath case".</p>	<p><u>07/16/2010</u></p>

Image 3: IG Case Management System Entries

Meanwhile in late July through August 2010, Acting Inspector General Kendall was receiving information from the IG’s Central Region staff tasked with reviewing OCS safety issues and coordinating with Assistant Secretary Lewis and Assistant Secretary Suh on the details for finishing the OCS Safety Oversight Board’s recommendations and report to the Secretary.⁸² A draft of the Board’s report was sent to senior Department officials for review and comment on August 11, 2010.⁸³

⁸⁰ July 28, 2010 12:04 pm email from Harry Humbert to Richard Larrabee, subject: PI-0562.

⁸¹ The IG’s case management system was updated on July 28, 2010 . See Image 3.

⁸² See e.g., July 28, 2010 2:34 pm email from Mary Kendall to Wilma Lewis and Rhea Suh (and seven CCs, including IG Chief of Staff Hardgrove), subject: Re: oversight board. See also, August 4, 2010 8:53 pm email from Mary Kendall to Wilma Lewis (and eight CCs, including Assistant Secretary Suh and IG Chief of Staff Hardgrove), subject: Re: oversight board.

⁸³ August 11, 2010 11:23 pm email from Wilma Lewis to David Hayes, Steve Black, Laura Davis (and 12 other officials and CCs to Ms. Suh, Ms. Kendall (and four other officials), subject: Draft Safety Oversight Board Report.doc.

However, the IG's lead investigator was still having difficulty obtaining documents from the Department, especially compared to the work being performed by the IG in support of the OCS Safety Oversight Board.⁸⁴ An internal IG email⁸⁵ indicates the issue was elevated to IG Chief of Staff Hardgrove. The lead investigator sent an email on August 10, 2010 to Assistant Inspector General Dupuy asking, "How is moratorium case coming?" Mr. Dupuy responded, "it is an interesting one, I have to get with Steve again re: the one missing piece on the case regarding email requests, Harry and I discussed it this morning."

As a result of this prompting, the lead investigator was allowed to proceed with a limited email search for Mr. Black's email files between May 26 and 27, 2010.⁸⁶ According to the IG's internal case management system, a search of one of the Department's email archive systems was attempted on August 11, 2010. However, the search was not successful, as the Department has previously discontinued systematically saving emails in the specific archival database that had been searched.⁸⁷ Internal IG documents indicate Acting Inspector General Kendall and Chief of Staff Hardgrove were made aware of these problems and agreed to having Mr. Humbert request documents directly from Mr. Black.⁸⁸

On September 1, 2010, Program Integrity Division Director Humbert issued a memorandum to Mr. Black requesting copies of emails and drafts of the Executive Summary received from outside the Department between May 26 and 27, 2010. Deputy Solicitor Art Gary responded on behalf of Mr. Black (and Mr. Kemkar). However, no documents were immediately forthcoming, as the Department reviewed the IG's request and reviewed whether any of Mr. Black's and Mr. Kemkar's documents were "privileged."

⁸⁴ In contrast, an August 11, 2010 10:47 am email to Mary Kendall from Don Crook, Assistant Special Agent in Charge, IG Central Region, indicates that the IG staff assisting the OCS Oversight Review Board conducted 140 interviews and reviewed more than 2,000 documents.

⁸⁵ August 8, 2010 8:49 am email from Assistant Inspector General for Investigations John Dupuy to Richard Larrabee, subject: Re: NYT article.

⁸⁶ However, internal IG emails indicate the lead investigator was not allowed to request the computer hard drives from potential witnesses or interview Secretary Salazar. See e.g., August 12, 2010 12:40 pm email from Harry Humbert to Richard Larrabee, Subject Re: Zantaz.

⁸⁷ The Department had deployed an email archiving system called Zantaz in order to automatically preserve records sent from or to the Secretary's Office and certain bureaus that may be relevant to Indian trust litigation before discontinuing its use in April 2010. The IG apparently had been able to search for documents maintained in the Zantaz database in connection with other investigations as an alternative or in addition to doing other forms of centralized email searches. These broader centralized email searches are still available by reviewing the Department's email servers and are conducted, with approval by IG management, by staff within the IG's computer crimes unit.

⁸⁸ August 20, 2010 4:13 pm email from Harry Humbert to Richard Larrabee, subject: Black. See also, Case Management System entry for August 20, 2010. Mr. Humbert went to Mr. Black's office on August 20, 2010, but Mr. Black was not there. According to a Case Management System entry dated August 25, 2010, Mr. Humbert made a second unsuccessful attempt that day to meet with Mr. Black to request his documents.

Meanwhile, the Department released the OCS Safety Oversight Board's report on September 8, 2010.

The involvement of the Solicitor's Office prompted a strong reaction from the lead investigator who, in a September 10, 2010 email, wrote: "I would like to point out that the Secretary's Office's approach to our request for documentation, ironically, is in direct contradiction with Secretary Salazar's own memorandum he issued on April 20, 2010 to the entire department regarding cooperation with the OIG."⁸⁹

The lead investigator continued to express his concern with the Department's handling of this document request:

Based on my understanding after having worked many OIG cases, we have always received all requested documentation, analyzed it and moved forward with our investigation utilizing the information derived from the documentation. After a final ROI is drafted, we then afford [the Solicitor's Office] the opportunity to review the ROI to identify any departmental privileged information/documents; OIG's OGC then consults with [the Solicitor's Office] about what documents/information will ultimately be included or withheld from the ROI, based on privilege.⁹⁰

The lead investigator concluded with: "Regarding this specific instance, concomitant with other instances we have previously discussed concerning this investigation, **I am deeply concerned that this is yet another example of how a double standard is being followed in this investigation in granting great deference to the Secretary's Office that would not be granted to any other departmental bureaus or employees.** For what it is worth. Have a great weekend."⁹¹ (Emphasis added)

The Department appeared resistant to provide Mr. Black's documents to the IG out of concern that that may be subject to a claim of Executive Privilege by the President.⁹² According to an internal IG email,⁹³ IG General Counsel Delaplaine informed Deputy Solicitor Gary that such privilege concerns are not a legitimate basis to withhold documents from the IG:

The anticipated constitutional battle over presidential powers did not occur today, as our discussion started with Art [Gary] advising that he has yet to review the material we requested. I did take the opportunity to

⁸⁹ September 10, 2010 9:01 am email from Richard Larrabee to Harry Humbert, Subject PI-PI10-0562-I.

⁹⁰ Id.

⁹¹ Id.

⁹² Mr. Black's claim during his interview that the document were privileged may have been a factor in the IG management's reluctance to authorize a full-scale search for emails, as opposed to the limited document collection directly from Mr. Black, as such a broad search may have come across other privileged communications with the White House. Interview with senior manager in IG's Office of Investigations, December 4, 2012.

⁹³ At the Committee's August 2, 2012 hearing, Acting Inspector General claimed she was unfamiliar with this email when asked.

explain our position that they do not have a valid basis to keep the requested material from us as it could not fall under the executive privilege document (there was no decision pending for the President to make as the moratorium decision had already been made; the only issue being discussed was how to word an executive summary).⁹⁴

Mr. Delaplaine added, “Art gave the impression that he agreed and that he viewed his likely role as explaining to the interviewee why his documents cannot be withheld. He also mentioned that if anyone were to assert executive privilege, it would have to come from the White House.”⁹⁵

On September 24, 2010, Deputy Solicitor Gary sent an email to IG General Counsel Delaplaine transmitting emails from Mr. Black and Mr. Kemar and advising, “We have concluded that all of these communications and attachments are subject to the deliberative process and presidential communications privileges. ... The Department would assert these privileges and withhold these documents from disclosure under exemption 5 of the Freedom of Information Act, discovery in litigation, etc.”⁹⁶ The email from Mr. Gary also requested the opportunity to discuss the Department’s privilege claim before the IG proposed disclosing any of the documents. In a September 24, 2010 email, Mr. Delaplaine states, “We will comply with their claim of privilege unless and until we collectively decide otherwise.”⁹⁷

IG INVESTIGATOR NOT ALLOWED TO INTERVIEW WHITE HOUSE OFFICIAL

Based upon his review of Mr. Black’s and Mr. Kemkar’s documents, the lead investigator recommended seeking an interview with Joe Aldy, Special Assistant to the President for Energy and Environment and one of the White House officials who provided edits to the Drilling Moratorium Report.⁹⁸ The afternoon of September 27, 2010, the lead investigator also sent a revised draft of the Report of Investigation to his supervisor, updated to reflect the emails provided by Mr. Black and Mr. Kemkar, adding:

Based upon our discussions, assuming my recommendation to request an interview with the White House will be denied by upper management of OIG, I will start completing the ROI by incorporating this [Investigative Activity Report summarizing the emails from Mr. Black and Mr. Kemkar].

⁹⁴ September 17, 2010 4:03 pm email from Bruce Delaplaine to Stephen Hardgrove, CCs to Harry Humbert and John Dupuy, Subject meeting with Art Gary.

⁹⁵ Id.

⁹⁶ September 24, 2010 4:35 email from Art Gary to Bruce Delaplaine, subject OIG Sep 1, 2010 Letter Response.

⁹⁷ September 24, 2010 5:41 pm email from Bruce Delaplaine to Harry Humbert and Richard Larrabee, Subject: Fw: OIG Sep 1, 2010 Letter Response

⁹⁸ IG Case Management System entry for September 27, 2010. See also, September 25, 2010 email 1:05 pm email from Richard Larrabee to Harry Humbert, Subject Fw: OIG Sep 1, 2010 Letter Response: “The WH clearly edited the version sent to them by DOI in a manner that created the misrepresentation – intentional or not, only interviews with WH staff could possibly determine.”

As directed, I will make no mention in the ROI of the fact that we did not conduct any independent validation that Black provided all of his emails that would be responsive to our request.⁹⁹

According to an internal IG email,¹⁰⁰ Acting Inspector General Kendall and Chief of Staff Hardgrove met with managers in the IG Office of Investigations to discuss the moratorium report. On October 5, 2010, Ms. Kendall was provided a legal opinion, updated to reflect the contents of Mr. Black's and Mr. Kemkar's emails, on whether the Drilling Moratorium Report violated the Information Quality Act.¹⁰¹ In an email exchange between Ms. Kendall and Mr. Delaplaine, it appears the IG was planning to follow up with the Department on its privilege concerns but it is unclear what the outcome was.¹⁰²

On October 8, 2010, Acting Inspector General Kendall circulated by email revised language she wanted used in the Report of Investigation, substantially rewriting the portion of the report describing the emails that were exchanged between the Department and the White House that led to the incorrect peer review language and the Department's compliance with the Information Quality Act.¹⁰³ Among the draft language Ms. Kendall struck was a sentence saying the IG could not "independently validate that the emails provided by Black in response to the IG were complete and unedited."

On October 14, 2010, the lead investigator sent to his supervisor, Mr. Humbert, a revised version of the draft ROI, incorporating the edits from Ms. Kendall.¹⁰⁴ The supervisor then sent an email to Ms. Kendall saying he had received edits back from the lead investigator and asking for time to discuss with Ms. Kendall.¹⁰⁵ Ms. Kendall indicated she was available to meet any time that day. The lead investigator followed up with another revised draft Report of Investigation on October 19, 2010, which was then provided to Ms. Kendall.¹⁰⁶

⁹⁹ September 27, 2010 12:08 pm email from Richard Larrabee to Harry Humbert, Subject Re: When is it good to call to Discuss Moratorium Issues? Note: The language referenced in the quote about not being able to validate emails was included in a draft of the report but was stricken during the editing process by Ms. Kendall.

¹⁰⁰ September 29, 2010 3:53 pm email from Harry Humbert to John Dupuy and Scott Culver, Subject: reminder.

¹⁰¹ October 5, 2010 1:59 pm email from Bruce Delaplaine to Mary Kendall, subject: The Information Quality Act and the Secretary's May 27, 2010 Safety Report to the President.pdf

¹⁰² October 7, 2010 3:01 pm email from Mary Kendall to Bruce Delaplaine, subject Re: doc I just gave you re moratorium: Mr. Delaplaine: "[D]o you want me to raise the privilege issue with [Deputy Solicitor] Art [Gary] today," to which Ms. Kendall responded, "Don't worry about Art today. I am going to raise it with [Deputy Chief of Staff] Renee Stone this afternoon."

¹⁰³ October 13, 2010 2:13 pm email from Mary Kendall to Harry Humbert, Richard Larrabee, Kevin Laden (CCs sent to John Dupuy, Scott Culver, Bruce Delaplaine, subject: The attachment would help

¹⁰⁴ October 14, 2010 10:01 am email from Richard Larrabee to Harry Humbert, subject: ROI.

¹⁰⁵ October 14, 2010 10:35 am email from Harry Humbert to Mary Kendall, subject: Moratorium Edits: "I have them back from Richard. Three areas that I wanted to quickly discuss whether it is good for you."

¹⁰⁶ October 19, 2010 4:55 pm email from Harry Humbert to Mary Kendall, Subject Fw: FMDD ROI

As IG staff worked to finalize the draft report in late October 2010, an IG staff member asked Acting Inspector General Kendall whether any portions of the draft report should be provided to Mr. Black for review and comment.¹⁰⁷ Ms. Kendall replied: “I have communicated to the Deputy Chief of Staff [Renee Stone] what we are saying about the privilege exchange. We don’t need to send it to Steve Black, but I appreciate your raising the issue.”

However, before the report could be finalized and released, a direction was given not to finalize or distribute the report due to a “possible new development.”¹⁰⁸ The new development, apparently, was that Ms. Kendall was awaiting an answer about whether the lead investigator would be allowed to interview Mr. Aldy, the White House staffer.¹⁰⁹ According to a November 1, 2010 email from Deputy Secretary Hayes to Ms. Kendall, the White House Counsel’s office was consulted:

After teeing the issue up last week, I had a conference call this afternoon with White House counsel regarding the two open issues involved in finalizing your moratorium report: (1) potential release of the email exchange with the WH: and (2) the potential ok for you to interview Joe Aldy (so that you can report directly on the nature of the WH editing, and whether it was intended to link the peer review to the moratorium decision or whether it was an inadvertent consequence of the editing process).¹¹⁰

Mr. Hayes advised that he expected a response the following day. The documents obtained from the Department and the IG do not indicate whether a response was provided from the White House counsel. Ms. Kendall has said her office was not seeking permission from the Deputy Secretary but that the request to interview the White House official was made through him as a courtesy given the IG’s jurisdiction did not extend to the White House.¹¹¹ The Report of Investigation was finalized without the IG staff interviewing Mr. Aldy. The IG provided the final report to the Department on November 8, 2010, and publicly released it the next day.

In a November 9, 2010 email to an IG senior official, the lead investigator commented:

¹⁰⁷ October 28, 2010 5:59 pm email from Sandra Evans to Bruce Delaplaine and Mary Kendall, Subject: Federal Moratorium on Deepwater Drilling.

¹⁰⁸ October 29, 2010 12:52 pm email from Harry Humbert to Sandra Evans and Scott Swanson (CCs to Richard Larrabee and Bruce Delaplaine), Subject Re: Federal Moratorium on Deepwater Drilling.

¹⁰⁹ October 29, 2010 3:02 pm email from Mary Kendall to Harry Humbert , Subject Re: Federal Moratorium on Deepwater Drilling.

¹¹⁰ November 1, 2010 10 pm email from David Hayes to Mary Kendall (CC to Laura Davis), Subject Feedback on the moratorium report.

¹¹¹ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, unofficial transcript at pages 84-85.

I was very dismayed to see that the final version of the ROI failed to mention the disclaimer that we did not independently validate the emails provided to us by the Secretary's office. ...You know my feelings about our failure to independently validate the emails, and now I think we further exacerbated the issue by editing this ROI in a way that could be open to criticism as being an attempt to obscure this fact.¹¹²

In a letter dated November 9, 2010 to Acting Inspector General Kendall, Secretary Salazar stated that the IG's investigation confirms that there was no wrong doing in connection with the development of the Drilling Moratorium Report.

In a candid email to the same IG senior official, the lead investigator characterized the Secretary's statement as "spin":

Salazar's statement that our ROI concluded it was a mistake and unintentional is a clear attempt to spin our report – I truly believe the editing WAS intentional – by an overzealous staffer at the WH. And, if asked, I – as the Case Agent – would be happy to state that opinion to anyone interested. We simply were not allowed to pursue the matter to the WH. But of course, that was not mentioned in our report.¹¹³

CONCERNS ABOUT POSSIBLE WHISTLEBLOWER RETALIATION

Congress has taken a number of steps to protect and encourage whistleblowers, whether they are reporting violations of law to an agency inspector general or informing Congress about internal mismanagement or the wasting of funds at a government agency. In addition, under Section 7 of the Inspector General Act, agency inspectors general are responsible for investigating complaints alleging violations of law or mismanagement, gross waste of funds, and abuse of authority, as well as protecting from reprisal agency employees who blow the whistle.

The Whistleblower Protection Act, 5 U.S.C. § 2302, prohibits certain personnel practices, including the retaliatory transfer or reassignment or other "personnel action against an employee who discloses information to the Congress." In addition, section 713 of the Consolidated Appropriations Act of 2012, P.L. 112-74, prohibits the use of federal funds to relocate, reassign, or transfer, among other actions, an employee of the federal government for communicating with Congress or Congressional staff.

According to internal IG documents, IG management considered making personnel changes in 2012 that could have resulted in the transfer of the lead investigator who oversaw the investigation into the editing of the Drilling Moratorium Report. In the

¹¹² November 9, 2010 8:08 am email from Richard Larrabee to Kris Kolesnik, Subject Re: moratorium report.

¹¹³ November 10, 2010 12:39 pm email from Richard Larrabee to Kris Kolesnik, Subject Fw: News Article – Interior Dept. Responds to IG Investigation into its Oil Spill Report.

weeks after the investigator's concerns came to light, current Assistant Inspector General for Investigations Rob Knox sent an email to all investigative staff informing them of staffing needs in the Western Region Office in Sacramento and requesting a volunteer to be transferred there. Mr. Knox also advised, "in the event no one volunteers, it may be necessary to consider other alternatives to meet our staffing needs in Sacramento. This may include a review of our current staffing at smaller offices or domiciled locations to determine if a directed relation may be appropriate."¹¹⁴

The IG's lead investigator for the moratorium investigation, who works out of a home office and shared space at a federal building in Boston, is one of only a handful of Office of Investigation staff based in such a domicile location and who would have been subject to the directed reassignment.

Shortly thereafter, Mr. Knox began work to prepare for a directed reassignment in the event no volunteers came forward.¹¹⁵ Mr. Knox sent an email to each of the Special Agents in Charge and the Director of Program Integrity requesting an analysis of the workloads and resource costs associated with the employees based in domicile locations.¹¹⁶

In his analysis,¹¹⁷ the supervisor of the senior special agent based in Boston who handled the moratorium investigation reported that, "Although remotely located, SA Larrabee has become an integral part of the [Energy Investigations Unit ("EIU")]. ... SA Larabee's location has not impacted his ability to remain fully engaged with others in the office." The analysis noted the Boston based employee traveled 11 times in FY 2012, at an average of \$1504 per trip.¹¹⁸ The supervisor also found the costs and time associated with training the Boston based agent to develop his expertise on energy issues would be lost if the employee was reassigned and "is not in the best interest of the OIG or its mission."

¹¹⁴ June 12, 2012 email from Robert Knox to All Investigative Employees, Subject: Request for volunteer to accept Permanent Change of Station (PCS) to Sacramento, CA. Mr. Knox forwarded the email to Steve Hardgrove and Mary Kendall on June 12, 2012 at 5:28 pm and wrote, "FYI – keeping you guys in the loop...".

¹¹⁵ June 19, 2010 3:52 pm email from Robert Knox to Scott Culver (CC recipient redacted), Subject: Updates: "I want to be able to make a directed move decision quickly after the final date for Sacramento volunteers. Pet M. and I discussed the sorts of data he can look at to prepare for that decision. Also I will be sending out an email to the SACs requesting a 'justification' on all domicile locations. In other words, I want their best business case for keeping locations open. This will be just one more factor to consider in the decision."

¹¹⁶ June 19, 2012 4:32 pm email from Robert Knox to Jack Rohmer, Megan Wallace, David Brown, John Meskel, David Little (and CCs to Scott Culver and an unknown recipient whose name was redacted), Subject: Request for analysis. This email was forwarded to Mr. Hardgrove on June 19, 2012 at 5:14 pm: "FYI – just a continuing part of the process we are working on."

¹¹⁷ June 27, 2010 11:45 pm email from Keith Kuczka to Robert Knox and Scott Culver (CCs sent to Jack Rohmer and Don Crook), Subject: Domicile Analysis – Boston, MA. Mr. Culver responded at 11:58 am: "Keith, thanks for your prompt response. I have read your analysis and appreciate the comprehensive, and objective thoughts. Your input will be very valuable in our final analysis and decisions here at HQ."

¹¹⁸ This cost was approximately \$200 higher than the average trip cost, but the supervisor noted airfare from Boston to many locations was cheaper than airfare from Denver where the other EIU employees are based.

The Special Agent in Charge of the Sacramento office also informed Mr. Knox that although his office could use additional staff, he was not in favor of receiving the additional staff through a directed reassignment given the impact it could have on morale and may cause the affected employee to seek employment elsewhere, undermining the purpose of the reassignment in the first place.¹¹⁹

In response,¹²⁰ Mr. Knox said:

I realize directed moves have not often been used by this OIG in the past but we are now preparing for the future. The setting is different and calls for a new approach.

These sorts of changes have a dramatic impact on the entire workforce, not just the employees who are moved. For this reason, all senior managers and leaders in OIG must operate with the same commitment and understanding of how we are re-shaping the organization. I certainly look forward to the engaged and supportive leadership of each special agent in charge in this process.

We are trying to get you the right fit for your Western Region team. However, this process will not be driven by personalities. The selection may be based on a volunteer or a business case as to the right person for a directed move. In my view, all fully successful investigative employees are qualified to fill the position. I know whomever is assigned to your office will grow with the experience and the influence of yours and Eric's coaching and mentoring.

Mr. Knox then forwarded that message to IG Chief of Staff Hardgrove, adding, "FYI – just keeping you updated on the 'noise'."¹²¹

On June 25, 2012, Chairman Hastings sent a letter to Acting Inspector General Kendall requesting information about the staffing needs in the Sacramento office, the possible directed reassignment of employees in domicile locations, and Ms. Kendall's views on whether such a personnel move involving an employee who had communicated with Congress would constitute unlawful retaliation.

In her July 31, 2012 response, Ms. Kendall stated that the directed reassignment was one option under consideration to address budget considerations and staffing needs in the Western Region Office but that no decision had been made as of the date of the letter. Ms. Kendall also clarified that the only employees who would be subject

¹¹⁹ June 20, 2012 5:05 pm email from David Brown to Robert Knox and Scott Culver, Subject: Directed Reassignment to Sacramento.

¹²⁰ June 21, 2012 10:19 am email from Robert Knox to David Brown and Scott Culver, Subject Re: Directed Reassignment to Sacramento.

¹²¹ June 21, 2012 10:20 am email from Robert Knox to Steve Hardgrove, Subject Re: Directed Reassignment to Sacramento.

to a directed reassignment order were criminal investigators in the GS-1811 job series who would have agreed to such a transfer when they accepted employment.

Ms. Kendall declined to offer her views on whether such personnel actions would constitute unlawful reprisal against a Congressional whistleblower, explaining “the establishment of whistleblower status is always uniquely fact driven. Presently, we have no such facts.”

Although the IG has apparently not moved forward with its plans to address staffing needs to Sacramento through a directed reassignment, employees in domicile locations may still be faced with furloughs, reassignments, or reductions to address the possible budget sequestration.¹²²

FLOUTING A CONGRESSIONAL SUBPOENA UNDERMINES IG ACT

A duly authorized subpoena for documents was issued to the Acting Inspector General on April 12, 2012 for copies of 13 documents either created or obtained by the IG during its investigation in to the editing of the Drilling Moratorium Report. The Acting Inspector General Kendall informed the Committee that it would not comply with the subpoena pursuant to a protocol that allows the Department to assert a privilege claim over documents that have been provided by the Department to the IG.¹²³ This protocol, according to the Acting Inspector General, “promotes the free flow of information to the OIG and allows us to execute our oversight responsibilities to the fullest extent possible under the IG Act.”¹²⁴

According to the IG, the documents in question are Department documents that the Department has itself refused to provide to the Committee, and the Department has asserted “that they ‘implicate important Executive Branch confidentiality interest.”¹²⁵ It appears the only articulation of a privilege claim that the IG has received is the one first made by Deputy Solicitor Gary in a September 24, 2010 email to IG General Counsel Delaplaine.¹²⁶ That email explained the Department

¹²² Interview with senior manager in the IG’s Office of Investigations, December 4, 2012.

¹²³ See April 18, 2012 letter from Acting Inspector General Kendall to Chairman Hastings.

¹²⁴ *Id.* However, it is unclear what additional authority this protocol confers, given section 6(a)(1) of the IG Act already provides for an Inspector General “to have access to all records ... documents, papers, recommendations, or other material” necessary to conduct an investigation or audit. In addition, considering the difficulties the lead investigator had in obtaining documents in a timely manner directly from witnesses in the moratorium investigation, as opposed to through the Solicitor’s Office, it is also unclear whether the Department is satisfying the Secretary’s April 20, 2010 policy memorandum instructing employees to assist the IG with investigations and to make even privileged documents available to the IG upon request.

¹²⁵ *Id.*

¹²⁶ The Committee has obtained documents from the IG indicating the IG General Counsel had additional communications with the Solicitor’s Office in February and March 2011 concerning whether the IG could release any attachments to the IG’s November 2010 report. According to a February 7, 2011 email to Bruce Delaplaine (CC sent to Ed Keable), Art Gary advised, “In light of the concerns raised when you published the report I don’t think

considered the documents provided by Mr. Black and Mr. Kemkar to be covered by the Freedom of Information Act's Exemption 5, protecting privileged communications, and requested an opportunity to further discuss the privilege concerns before the IG released the documents.

To be clear, the Freedom of Information Act¹²⁷ and the Inspector General Act¹²⁸ cannot be used a basis to withhold information from Congress. IG General Counsel Delaplaine has also opined that the documents in question do not appear to be covered by a valid claim of executive privilege.¹²⁹

Internal IG documents indicate that Deputy Secretary Hayes also had communications with the White House Counsel's office in late October or early November 2010 concerning whether the IG could interview a White House staffer and release communications between the Department and the White House. It is unclear from the documents obtained by the Committee whether the White House Counsel ever responded to Mr. Hayes.

The IG and the Department both appear to have failed to follow the long-standing procedures concerning Congressional oversight requests that may implicate Executive Branch confidentiality interests. According to a November 4, 1982 memorandum from President Reagan, an agency head is instructed to "promptly notify" the Attorney General concerning Congressional requests seeking information that raises substantial questions of executive privilege and the Attorney General shall, in turn, notify and consult with the White House Counsel. Under the Reagan policy, agency heads, the Attorney General, and the White House Counsel may determine that the information is not covered by executive privilege and direct its release.

However, if it is believed the information may be subject to an executive privilege claim, "the issue shall be presented to the President" and the agency head and Attorney General will be advised of the President's decision. Pending a decision by the President, the agency head is instructed to advise the Congressional committee to hold its request in abeyance. If the President does assert executive privilege, the agency head is to inform the Congress of the assertion and that it was made with the "specific approval" of the President.

you should do so [release the unredacted report and attachments] without us proposing this to WHC [White House Counsel]."

¹²⁷ 5 U.S.C. § 552(d).

¹²⁸ Section 5(e)(3) of the IG Act: "Except to the extent and in the manner provided under *section 6103(f) of the Internal Revenue Code of 1986 [26 USCS § 6103(f)]*, nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof."

¹²⁹ September 17, 2010 4:03 pm email from Bruce Delaplaine to Stephen Hardgrove, cc's to Harry Humbert and John Dupuy, subject: "meeting with Art Gary."

Neither the Department nor the IG has indicated that the President has asserted, or was even considering asserting, executive privilege for the 13 documents covered by the April 12, 2010 subpoena.

The Department's vague assertion of executive branch confidentiality interest, and the IG's blind reliance on such a claim, falls far short of an assertion of executive privilege by the President and does not excuse their failure to comply with the Committee's subpoenas.

SUMMARY: The Acting Inspector General's testimony at the August 2, 2012 oversight hearing did little to allay the concerns that her involvement in the OCS Safety Oversight Board compromised the IG's independence in handling of the IG's moratorium investigation; that the lead investigator was frustrated in his ability to obtain information or pursue leads as he felt necessary; that the June 17, 2010 testimony was complete and accurate; and that refusal to comply with a subpoena was well-founded. If anything, the Committee's oversight has identified new and troubling questions about whether the IG's proposed personnel actions would be in retaliation for communicating with Congress, and whether the Acting Inspector General's August 2, 2012 testimony was itself complete and accurate.

PART 3 – RENEWABLE ENERGY STUDY DROPPED: IG Never Finalized Critical Report

During the course of the Committee’s investigation into the IG’s review of the Drilling Moratorium Report, the Committee expanded its oversight of the IG to include other matters handled during the time period when the Department has been without a permanent Inspector General. The expanded oversight has raised new questions about whether the IG’s independence and objectivity have been impaired and whether Congress and the public have been properly kept apprised of problems within the Department.

BACKGROUND: One such oversight area involved the IG’s work evaluating the Department’s renewable energy programs. The Obama Administration has announced several policy initiatives to promote the development of renewable energy on federal lands, among other priorities. However, based on a review of publicly available IG reports, including the Semiannual Reports to Congress,¹³⁰ it appeared the IG had not conducted any programmatic evaluations of the Obama Administration’s renewable energy programs and policies.

EXPANDED COMMITTEE OVERSIGHT OF IG RAISES NEW CONCERNS

On May 30, 2012, the Committee sent a letter to the IG requesting information about any audits, investigations, or evaluations concerning the Department’s renewable energy programs on federal lands (both on shore and offshore), and two other Administration priorities. The Committee’s letter requested the IG provide the information no later than June 7, 2012.

In a July 20, 2012 letter to the Committee, Acting Inspector General Kendall responded that “an evaluation conducted in 2010 on renewable energy was suspended following a meeting with the Department to discuss our draft report.” The letter went on to explain that “[a]fter conducting some follow up work subsequent to our meeting with the Department, we concluded that we could not verify all the information provided to us by the Department on such a comprehensive letter without undertaking considerably more field work.” The letter concluded by stating that due to the passage of time, the IG chose instead “to focus on more manageable size efforts in which we could be confident of the timeliness and accuracy of our findings, and make more meaningful recommendations.”

¹³⁰ The IG has since removed all publicly available reports, including copies of the Semiannual Report to Congress, from its website.

On August 22, 2012, the Committee sent a follow up letter requesting copies of the draft IG report that was provided to the Department for review in 2010, as well as emails and other documents concerning edits to the draft report, the Department's comments, and any meetings with Department officials to discuss the renewable energy study. The letter gave a deadline of September 5, 2012 for the requested documents.

IG staff informed the Committee that the IG would not meet the original deadline but would seek to respond on a rolling basis. The IG first provided a copy of the draft renewable energy study on September 17, 2012. On September 20, 2012, the IG provided a copy of a 37-page memorandum from Steve Black, Counselor to the Secretary, to Acting Inspector Counsel Kendall dated July 23, 2010, commenting on the IG's draft renewable energy study. Also on September 20, 2012, Committee staff met with Acting Inspector General Kendall, Assistant Inspector General for Audits Kim Elmore, and Associate Inspector General for External Affairs Kris Kolesnik to discuss the IG's handling of the renewable energy study. The IG provided additional documents on October 25, 2012.

According to internal documents, the IG staff spent between August 2009 and May 2010, interviewing senior Department officials, collecting information about the renewable energy programs from across the Department's bureaus, and preparing an initial draft of the renewable energy study. After an initial meeting with senior Department officials and the receipt of extensive comments from the Department during the summer of 2010, the IG staff attempted to revise the draft report to respond to the Department's and the Acting Inspector General's concerns. The Acting Inspector General even made specific line edits to the revised draft and sought assistance from one of the IG's staff writers to further revise the report in December 2010. IG staff who conducted the review objected to the changes, and the dispute was elevated to Deputy Secretary Hayes in April 2011.

In an attempt to further address the Department's and Acting Inspector General Kendall's concerns, the IG staff conducted additional research and prepared an addendum on the Department's activities since the initial fact-finding had concluded and the draft report had been prepared and submitted for the Department's review. The additional information was provided to Ms. Kendall in June 2011.

It appears, based on internal IG emails, that no further action was taken on the report until March 2012, when a Bureau audit liaison asked for the status of the renewable energy study and IG staff inquired with IG senior management on whether the evaluation remained open or closed. It is unclear from the internal IG documents obtained by the Committee whether the renewable energy study was ever officially closed.

FINDINGS: According to internal IG documents, the IG initiated its comprehensive review of the Department's renewable energy program on August 10, 2009, explaining in one email that the review would focus "on the regulations, policies, goals, and standards at the Departmental level as well as for each Bureau." The IG assigned a Certified Public Accountant based out of the IG's Sacramento regional office to serve as the team leader overseeing the renewable energy study. The IG hosted an entrance conference with the Department and Bureau officials on August 20, 2010, to discuss the scope and goals of the IG's review, including determining what policies, regulations, goals, and measures existed for each renewable energy program. After multiple drafts of a report and multiple meetings with senior Department officials, the IG declined to issue a final report.

IG STAFF'S RESEARCH AND WORK APPEARS FOR NAUGHT

Part of the IG's information gathering included an October 23, 2009, interview with Steve Black, Counselor to the Secretary and the official responsible for overseeing the development and implementation of Department's renewable energy programs under the Obama Administration. According to the IG team leader's notes, Mr. Black stated the Department has a long-term vision to promote renewable energy development, and has established several internal task forces, offices, and memorandums of understanding with other federal agencies and the state of California to promote that vision. The Department has also begun work to establish performance measures and goals and to prioritize certain projects for fast-track development.

On November 20, 2009, the IG team leader briefed IG senior management on the status of the renewable energy study and the team's preliminary findings. According to the internal briefing memorandum, the IG staff had concerns that "major issues have not been dealt with or handled sufficiently" including insufficient transmission lines; lack of measures and management controls; and a focus on solar, wind, and fast-track projects being handled by the Bureau of Land Management and the then Minerals Management Service to the exclusion of other projects, programs, and Bureaus. The IG staff added, "We had difficulty finding Departmental representatives and then meetings were cut short and not enough information was given to remove concerns found during the evaluation to date."

In early 2010, the IG staff finished their research and submitted a draft of their report to IG headquarters for review. In discussing the IG's planned outreach to the Department to discuss the draft report, Ms. Elmore sent an email on May 3, 2010, to the team leader stating, in part, that "The DOI has set up an energy reform team (anticipating our recommendation) and we want the team (representatives from each bureau) to have the benefit of everything we learned during the assignment." On May 10, 2010, the team leader and other IG staff presented their findings at the Department's "Greening the Environment" conference in Portland, Oregon.

The IG staff and management met with Department officials in an exit conference on May 27, 2010, to discuss the draft report and the IG's findings. According to the team leader's notes, Steve Black did not attend (the exit conference was held the same day the Department issued the Drilling Moratorium Report), but Laura Davis, current Chief of Staff, and other senior officials did attend all or part of the meeting. At the conclusion, Acting Inspector General Kendall offered to provide the Department a draft of the report for review.

DEPARTMENT COMPLAINS ABOUT CRITICAL DRAFT IG REPORT

On June 21, 2010, Acting Inspector General Kendall transmitted a revised draft of the renewable energy report to Secretary Salazar and requested a written response within 30 days. The transmittal memorandum stated, "We found that the major challenges facing Interior's ability to implement successful long term alternative energy plans include a lack of holistic coordination and communication of programs and efforts, inadequate management and creation of policy, a number of ground-level issues, and the insufficient planning for these programs after American Recovery and Reinvestment Act (ARRA) grants run out."

On July 23, 2010, Mr. Black sent Acting Inspector General Kendall a 37-page memorandum, along with 29 attachments totaling approximately 600 pages, commenting on the IG's draft report. Rather than issue a final report that included the Department's comments, the IG spent more than one year working to revise the draft report to better reflect the Department's and Acting Inspector General Kendall's comments and concerns. Ultimately, the IG never did publicly release a final renewable energy study.

Acting Inspector General Kendall sent an email to her senior staff on August 9, 2010, stating she had not yet finished reviewing the Department's comments and requesting an internal meeting "to be sure we are all on the same page when it comes to the final report. Let's have a discussion with [the Team leader and her management] before they get too far into the re-write." The meeting between Acting Inspector General Kendall and IG management to discuss the Department's comments occurred on August 13, 2010. The team lead was unavailable and did not attend the meeting, but according to an internal IG document dated September 22, 2010, she described Mr. Black's 37-page comment memorandum as "highly political and not always pertinent to our report."

CONFIDENTIAL PREDECISIONAL DRAFT

Memorandum

To: Mary L. Kendall
Acting Inspector General

From: 
Steve Black, Counselor and Janea Scott, Special Assistant

Subject: Department's Preliminary Comments on the Draft Evaluation Report: Creating a Deliberately Successful Approach to Alternative Energy: Positive Steps and Remaining Challenges (WR-EV-MOA-0017-2009)

Date: July 23, 2010

Thank you for the opportunity to submit comments on your draft report. Renewable Energy is one of the Secretary's highest priorities for the Department of the Interior. When Secretary Salazar first entered the Interior Building on January 21, 2009, he spoke of his vision of energy independence for the Nation. He recognized that the Department had a major role to play in reaching this long range goal. And the Department has made and continues to make incredible progress toward that goal. Excerpts from this speech Secretary Salazar made on May 5, 2009 give voice to his vision:

We always appreciate the views of the Office of the Inspector General and welcome the collaborative relationship that you are working to build. We are supportive of the kind of proactive, constructive work that can help us identify and fix issues before they become problems. We believe that we are all working toward the same goal, which is to have a robust and sustainable renewable energy program at the Department of the Interior and do our part in reaching the President's goals for the Nation.

Our primary concerns with the draft report are that it does not present a complete picture of the Department's renewable energy program and that it is focused on a limited set of examples that aren't placed within the context of the Department's broad renewable energy program.

Image 4: Excerpt of Steve Black Comments on Draft IG Report

It is unclear from the IG documents what specific direction was given to the team working on the renewable energy study at the August 13 meeting, but in the following months the review team worked to incorporate more of the Department's comments into a revised draft report. A revised draft of the renewable energy study was prepared by IG staff and submitted to IG management for review in October 2010.

Acting Inspector General Kendall remained dissatisfied with the review team's revisions and responses to the Department's comments. The Deputy Assistant Inspector General for Audits, Melanie Sorenson, sent an email on December 7, 2010,¹³¹ to IG management in Sacramento stating, "Mary would like to meet

¹³¹ Also on December 7, 2010, Acting Inspector General Kendall issued a report to Secretary Salazar containing the IG's analysis and evaluation of the policies and practices that contributed to the Deepwater Horizon accident, building off of the August 2010 report of the Outer Continental Shelf Safety Oversight Board, of which Ms. Kendall was a member.

regarding the Alternative Energy report. She has spent a lot of time reviewing the report, as well as reviewing the Department's response – she believes we should be incorporating more of their response into the body of the report than we currently do." Another meeting with the Acting IG and the IG staff was scheduled for December 10, 2010.¹³²

EDITS BY ACTING IG REMOVE CRITICISM, CHANGE MEANING

Acting Inspector General Kendall herself sent an email on December 20, 2010 to senior IG management and the review team lead stating that she had identified four themes she wanted addressed in a subsequent revision and advised that an IG staff/editor had been assigned "to review the report with cold eyes and a completely fresh mind." The four themes were: current renewable energy programs are decentralized without any comprehensive link; communication is not optimized leading to overlap and redundancy; specific performance goals, policies, and procedures are missing; and lack of clarity about how the Department will continue to promote private investment and development. She went on to direct the review team to work with the writer/editor "to revamp, and strengthen, the report in this direction."

On January 3, 2011, the writer/editor sent an updated version of the draft report, reflecting the edits from Acting Inspector General Kendall and herself, to the team lead for review. In transmitting the revised draft, the writer/editor stated, "Mary Kendall and I have worked on the Alternative Energy report the past few weeks. Attached is the draft we have reworked and inserted comments."

Overall, the edits by Acting Inspector General Kendall and the writer/editor softened the critical tone of the draft report and minimized the shortcomings in the Department's renewable energy programs.¹³³ For example, the first paragraph of the Results in Brief section on page 2 of the revised draft report was edited to remove critical statements about inadequate management and oversight at the

¹³² The IG staff person who led the renewable energy evaluation study recalled Acting Inspector General Kendall had a meeting or discussion with the Deputy Secretary about this issue during this time frame, as well as a subsequent meeting or meetings in early 2011. Interview with the team leader for the Office of Inspector General's renewable energy evaluation study (WR-EV-MOA-0017-2009), December 20, 2012. The IG has not provided any calendar entries reflecting such meetings or discussions occurred, but Majority Staff notes Ms. Kendall was in contact with the Deputy Secretary about the IG's moratorium investigation in November 2010 and a March 8, 2011 1:28 pm email from Ms. Elmore to IG Chief of Staff Hardgrove includes the statement, "I realize that we have a disconnect between what the team learned while performing our review and **what the department is telling Mary in her meetings.**" (Emphasis added).

¹³³ The IG's team leader said in her draft evaluation report, she had tried to give credit to the Department where appropriate but also recognized weaknesses and red flags she had found, but the edits from the Acting IG took out the critical parts and kept in the positive comments: "To me that is not forward thinking, that is glad-handing and that's not my job as an auditor. It changes the nature of what I found and, thus, makes it inaccurate." Interview with the team leader for the Office of Inspector General's renewable energy evaluation study (WR-EV-MOA-0017-2009), December 20, 2012.

Department, the lack of holistic approach in coordinating programs across Bureaus, and the absence of solutions to ground-level problems like transmission and storage. The opening paragraph after these edits read simply: “The U.S. Department of the Interior (DOI) is making many laudable efforts to quickly establish a variety of alternative energy programs.” This revision substantially changes the meaning conveyed in the original version.

Results in Brief

While ~~the~~ U.S. Department of the Interior (~~Interior of Department~~ DOI) is making many laudable efforts to quickly establish a variety of alternative energy programs, ~~there are major limitations to the success of these programs unless short and long term goals can be balanced. Specifically, we found that Interior is not holistically coordinating its projects and inter-bureau communication is lacking. In addition, there is inadequate management and oversight, as well as a need for detailed policy and procedures. Further, a number of ground level issues exist, such as a lack of sufficient transmission lines and storage facilities, as well as a lack of planning to accommodate water issues in the West. Finally, there seems to be insufficient plans for how to finance these programs and activities when American Recovery and Reinvestment Act funding expires.~~

*THIS
TURNS
PLAYS
THE
CONCRETE
AND PUTS
THE GIST
OF THE REPORT.*

~~Interior~~ ~~The Department~~ has the opportunity to become a leader in the industry as a ~~government~~ ~~Government~~ representative for alternative energy. ~~Not just for~~ ~~In addition to~~ the major solar and wind programs, ~~but with a holistic~~ ~~the Department~~ is ~~poised to take an~~ approach that is responsible and flexible enough to ~~continually~~ evolve with the development of new technologies in order to ensure long term success. ~~While~~ ~~DOI~~ and its bureaus must, ~~however~~, balance the promotion of important energy programs with the equally important responsibility it has to the environment ~~and accountability to Congress, and the public.~~

Over the last few years, ~~we have~~ ~~the Office of Inspector General has~~ had the opportunity to learn from several energy-related programs that have faced challenges in implementation ~~due to lack of systemic controls and inherent~~ ~~when~~ ~~launched without sound internal controls and clear mandates~~ ~~competing~~ interests. ~~Some of our~~ ~~Our~~ past reports have highlighted what can happen if ~~agencies do not take~~ ~~inform about the importance of taking~~ a deliberate approach to alternative energy development.

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Comment [kp1]: We address the issue with the environment, but we don't expand on it. If the Department's programs are doing something especially well in regards to the environment, we should highlight those, and vice versa.

Image 5: Edits to Draft IG Renewable Energy Study¹³⁴

In the body of the revised draft report, several other sections were substantially revised and critical language removed. In the section on Policies, Procedures, Performance Goals, and Management Tools on page 12 of the revised draft, three sentences criticizing the Department’s emphasis on starting programs and minimizing environmental impacts at the expense of long-term operation, sound financial management, and transparency.

¹³⁴ The original text was drafted by the team leader for the IG’s renewable energy study. The redline-strikeout edits were prepared by Acting Inspector General Kendall and an IG staff writer/editor. The handwritten comments in the margin of the draft text are those of the IG team leader who drafted the original text.

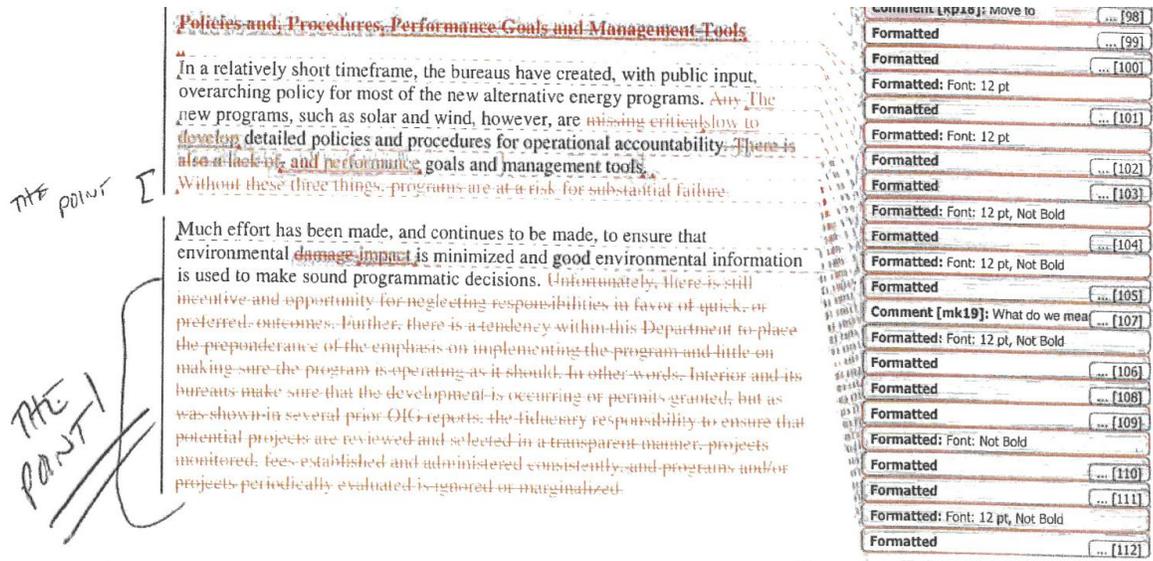


Image 6: Edits to Draft IG Renewable Energy Study¹³⁵

In a January 5, 2011, email to her immediate supervisors in the Sacramento regional office, the team leader described the edits and comments from Acting Inspector General Kendall and the staff writer/editor as “a wee bit frustrating.” The team leader also told the Committee’s majority oversight staff that she could not support the changes because they were not accurate.¹³⁶ One of her supervisors responded by recommending that the team leader attempt to answer the questions and comments “as you deem appropriate,” “determine if any of the edits made to the report are in conflict with the facts gathered or the analysis made and disclose any such problems to [the staff writer/editor] and Mary K.,” and “determine if the report, as now constructed, accurately conveys the current status of alternative energy development and coordination within DOI and report any misgivings in this regard.” The supervisor added, “I realize this will take quite a bit of effort on your part, but believe that we have a duty to the OIG to provide our best advice and counsel. It is then up to those above us to decide what to do what this advice and counsel.” The team leader then provided the staff writer/editor, in a January 20, 2011 email, general background information about the research and fact-finding that had used to develop the report.

¹³⁵ The original text was drafted by the team leader for the IG’s renewable energy study. The redline-strikeout edits were prepared by Acting Inspector General Kendall and an IG staff writer/editor. The handwritten comments in the margin of the draft text are those of the IG team leader who drafted the original text.

¹³⁶ Interview with the team leader for the Office of Inspector General’s renewable energy evaluation study (WR-EV-MOA-0017-2009), December 20, 2012: “If you have seen some of my notes in the margins in this report, I was a little bit frustrated with the direction because to me it changed very much the tenor of the report and the findings, to the extent that I could no longer support it as it was recommended being changed ... because this wasn’t accurate anymore.”

DISAGREEMENT OVER DIRECTION OF REPORT ESCALATES

However, the IG staff ultimately was not happy with the direction of the report, based on the edits by Acting Inspector General Kendall and the staff writer/editor. According to a February 22, 2011 email from Ms. Elmore to the Sacramento regional supervisors, the dispute between staff and Acting Inspector General Kendall was so significant that it warranted elevation to Deputy Secretary David Hayes for resolution:

I met with Mary last week and one of the topics I brought up was alternative energy. I explained to her that the team could not support the report as written. She said she could not live with our draft. I suggested that we get together with David Hayes to discuss. I explained to her that the examples being provided to her by the administration were not in the same 'category' of alternative energy and that they were mixing apples and oranges.

Ms. Elmore added: "Mary is meeting with David Hayes this week. At the meeting she will request a time to meet on alternative energy. ... Hopefully we can finally put this issue behind us if we can get all the knowing parties in the same room."

Based on internal IG documents, IG staff began work preparing for the meeting with Deputy Secretary Hayes, which was scheduled for April 20, 2011 – approximately one year after the draft renewable energy study had been submitted to IG management for review and 11 months after the original exit conference with the Department. Invitees for the April 20 meeting included Deputy Secretary Hayes, Counselor Black, Chief of Staff Laura Davis, Bureau and Service Directors, and two special assistants to Counselor Black, Neal Kemkar and Janea Scott.

However, it is unclear from these documents whether IG staff would have an opportunity to meet with Acting Inspector General Kendall before the Hayes meeting, and whether they would even be allowed to speak at the Hayes meeting to make their case in support of the original draft report. In a March 1, 2011 email to Ms. Elmore, the team leader asks:

Based on Steve's [Hardgrove, IG Chief of Staff] email we cannot tell what the plan is for meeting with the department. **Are we allowed to be discussing (and refuting if necessary) with the Department or were going to have to sit quietly and not address discrepancies?** Since it looks like we are only planning for one day, are we only meeting with the Department or are we working with Mary directly after the meeting to get the report written and finished? Essentially, do we have a plan and strategy yet or are we flying blind? (Emphasis added)

Following up on the questions from the team leader, Ms. Elmore herself writes to Chief of Staff Hardgrove in a March 8, 2011 email and requests the opportunity to meet with Acting Inspector General Kendall before the Hayes meeting “so that we ... know exactly what is expected of us in this meeting.” Ms. Elmore continued, stating, **“I realize that we have a disconnect between what the team learned while we were performing our review and what the department is telling Mary in her meetings.** I know some of this disconnect is timing, that is projects have begun since we concluded our field work. and [sic] also I believe some of the disconnect is the department speaking about programs that are not classified as alternative energy.” (Emphasis added). The email concludes, “If you and Mary are open to a meeting with us I will get it scheduled.”

One of the supervisors in the Sacramento office sent a follow-up email, also on March 8, 2011, recommending that the IG try to anticipate the arguments that will likely be made by the Department at the Hayes meeting on April 20:

I would agree with the ‘timing’ aspects and reading the meeting invite and purpose ... and taking into consideration the response we have already received, I could imagine Steve Black, along with D. Hayes and L. Davis focusing that meeting on highlighting to the OIG the dept’s accomplishments, in effect, laying out for us **‘what has changed since the draft report,’** which our report data is now very dated and we would be in a situation of not knowing and unable to add anything to the conversation, in effect, try and defend our prior work or the dept. attempting to embarrass OIG as to what we don’t know.¹³⁷

Two weeks later, and the IG staff continued to stress the need to prepare internally and to fret about whether Acting Inspector General Kendall would be supportive of their position at the Hayes meeting. In a March 25, 2011 email, Ms. Elmore wrote to the team leader and a supervisor in the Sacramento regional office that, “I think it is important that we put together the draft agenda for the meeting on the 20th and walk Mary through why we have whatever topics we put on the agenda. (so she knows our viewpoint) [sic] I know it is a difficult task to put the agenda together because we do not know where Mary will be coming from. But I see this as our opportunity to show her some of our views.”

IG MEETS AGAIN WITH DEPARTMENT TO ADDRESS CONCERNS

Acting Inspector General Kendall met with staff in the Sacramento regional office on April 13, 2011 to prepare for the Hayes meeting the following week. According to an agenda for the meeting, IG staff wanted guidance from Acting Inspector General Kendall on several questions, including: “[c]an we discuss and refute if necessary or is it a listen only approach,” “[w]hat is our stop point (when/in what circumstances

¹³⁷ Emphasis in original.

are we inflexible),” and “[w]hat are we willing to change in the report, separate from Departmental concerns.”

According to the notes of the meeting prepared by the team leader, Acting Inspector General Kendall began the April 20, 2011, meeting with a welcome followed by introductions. Counselor to the Secretary Black then took over and outlined steps the Department had taken in the area of renewable energy. The team leader noted that throughout Mr. Black’s presentation, other attendees made supportive comments “which was received well by the Acting IG and others from the OIG as a sign that new work had been accomplished since fieldwork had ended that the OIG was not aware of.”

The team leader then had an opportunity to present her findings in rebuttal: “However, when it came time for the evaluation team to comment, [the team leader] clarified that virtually all of the efforts listed by Mr. Black were well known to the team and were not a presentation of new information.” The team leader summarized her findings, according to notes in the IG’s case management system, as a “disconnect” between senior management and lower level staff and field offices, miscommunication or (or entire lack thereof) and the absence of a long-term strategy.

Mr. Black and other attendees “proceeded to disagree with the findings [the IG staff] presented, using some of the already discussed accomplishments to support their disagreement,” according to the team leader’s notes of the meeting in the case management system. The IG team leader attempted to provide additional information, but the “Acting IG stopped the explanations from [the team leader] and began to transition the meeting to a close.” After a few additional comments from Department officials, “[t]he Acting IG then thanked the attendees, assured the attendees that efforts made by the Department would be reflected in the report, and concluded the meeting.”

In the weeks after the meeting with Deputy Secretary Hayes and Counselor Black, the IG staff continued work on updating the draft renewable energy report, including conducting a May 12, 2011 interview the Department’s Director of Planning and Performance Management, Richard Beck. Mr. Beck confirmed that the Department lacked measures or goals for renewable energy across the Department, focusing mostly on the Bureau of Land Management and fast-tracked projects. According to an internal IG document, the review team was scheduled to meet with Acting Inspector General Kendall on May 12 almost immediately after the team’s meeting with Mr. Beck.

It is unclear, based on the documents obtained from the IG, what occurred after the meeting with Acting Inspector General Kendall. However, on June 14, 2011, Ms. Kendall sent an email to Counselor Black requesting a copy of his presentation materials from the April 20 meeting with Deputy Secretary Hayes. Also on June 14,

2011, the team leader circulated a draft memorandum updating the Department's activities on renewable energy since the conclusion of field work more than a year earlier that could be included as an addendum to a finalized report.¹³⁸ Although recognizing that the "Secretary has made great strides in making alternative energy a priority across the Department," the draft addendum continues to point out "a cohesive, long term prospective for alternative energy across the Department" is still missing.

The IG did not take further steps to finalize the renewable energy study, but the IG did not provide a formal close out memorandum. In March 2012, staff within the IG and in one of the Bureaus that had assisted the IG during the field work phase inquired into the status of the report. According to a March 20, 2012 email from Ms. Sorenson to the Sacramento regional office supervisors, "I just finished speaking to Mary. She is leaning toward drafting a memo to close out the job." However, notes from the IG's internal case tracking system suggest the report was still listed as open in June 2012, more than a year after the meeting with Deputy Secretary Hayes and one month after the Committee requested information about any IG audits or evaluations into the Department's renewable energy programs.

In a September 20, 2012 meeting with Committee staff, Acting Inspector General Kendall explained that the report was never finalized because the draft findings lacked sufficient support and documentation, especially compared with other IG reports, and had become untimely given the passage of time. She denied that pressure from the Department had any influence on the decision to not finalize the report. However, the IG had not provided the additional documentation at the time of the meeting, and Committee staff therefore was not in a position to ask about the concerns raised by the review team's emails and notes.

SUMMARY: These documents suggest strong disagreements and frustration by staff in the direction and comments given by the Acting Inspector General and the appearance that she was more accepting of the criticisms of her staff from the Department than she was the work being done by her own staff. It is also unclear, based on the documentation provided by the IG, why this review faced such considerable delays that the original fact-finding became outdated and that the team's efforts to incorporate more timely information in the report was to no avail. The IG's decision to not finalize the renewable energy report, and the lack of transparency about its findings, has deprived the public and Congress of learning about the challenges faced by the Department in pursuing the Obama Administration's renewable energy policies.

¹³⁸ The team leader recalls providing the draft addendum to Acting Inspector Kendall before Ms. Kendall was scheduled to have a meeting or discussion with the Deputy Secretary. Interview with the team leader for the Office of Inspector General's renewable energy evaluation study (WR-EV-MOA-0017-2009), December 20, 2012.

PART 4 – A PATTERN EMERGES: Embarrassing Investigations Not Pursued

Congress intended an Inspector General to act independently and to serve without regard to the politics of the Administration in charge. It also desired to be kept informed of wrongdoing and problems within a department or agency. Beginning with the inquiry into the IG's handling of the Drilling Moratorium Report investigation, and continuing with the expanded oversight into the operations and activities of the IG since it has been without a permanent Inspector General, the Committee has been focused on ensuring the IG is holding the Obama Administration to the same ethical and legal standards as the previous administration.

However, the Committee's oversight has identified significant concerns suggesting the IG has not been as aggressive in blowing the whistle on misdeeds by the current Administration, although it remains unclear whether this is intentional or merely a result of the IG's more accommodating and less assertive approach for interacting with the Department. Indeed, the IG's approach to working collaboratively with the Department, in many cases without conducting formal investigations or issuing reports, may allow the Department to address the single, isolated problem at hand, but it has the effect, whether intentional or not, of reducing the public's and Congress' awareness of problems in the Department and minimizing the deterrent effect that a formal investigation or report would have throughout the Department.

BACKGROUND: In recent years, the IG has pursued several high-profile investigations involving former officials of the George W. Bush Administration. For example, between 2009 and 2010, the IG conducted investigations into whether the Bush Administration had improperly rushed an environmental review for the Cape Wind project off the Massachusetts coast (the IG concluded it had not);¹³⁹ alleged conflicts of interest in the handling of oil shale leases and negotiation of employment by former Secretary Gale Norton (the Department of Justice decline to prosecute); and the renegotiation of oil shale lease addenda by outgoing Bush Administration officials.

In calling for an IG investigation into the editing of the Drilling Moratorium Report, then Ranking Member Hastings and six other minority members of the Natural Resources Committee wrote to Acting Inspector General Kendall to say, “[d]uring the previous administration, the Inspector General’s office had a record of

¹³⁹ Cape Wind Associates, LLC, Report of Investigation-PI-MA-08-0513-I, January 28, 2010.

aggressively investigating exactly these types of actions. ... We expect you to hold the Obama Administration to this same standard.”¹⁴⁰

COMMITTEE’S OVERSIGHT EXPANDS TO INCLUDE ETHICS, SCIENTIFIC INTEGRITY

In recent months, the Committee’s oversight interest has expanded to include other matters handled during the time the IG has been without a permanent Inspector General, focusing on any IG’s work involving renewable energy, Klamath River dam removal, and scientific integrity – all Obama Administration priorities. On May 30, 2012, a letter was sent to the IG requesting information about any audits, investigations, or evaluations into Department programs and policies involving renewable energy on federal land, restoration of the Klamath River basin (including any science on dam removal), and implementation of the Department’s January 2011 scientific integrity policy, as well as a list of any scientific integrity complaints investigated by the IG since January 2009. The IG provided the requested information on July 20, 2012.

At the Committee’s August 2, 2012, oversight hearing, Acting Inspector General Kendall was asked several questions about how the IG interacts with the Department’s Ethics Office and the steps taken to investigate potential violations of federal ethics and conflict of interest laws, as well as follow up questions about the Department’s handling of scientific integrity complaints stemming from the IG’s July 20 response.

In describing the standards used by the IG to pursue an ethics investigation, Acting Inspector General Kendall responded: “The process differs almost every case. But we review the allegations and determine whether or not it is something that falls within the scope of what we have defined as the high-impact, high-risk cases. And if it does, we will accept it for investigation. Most ethics cases do fall within that.”¹⁴¹

At the August 2 hearing, Acting Inspector General Kendall was asked to provide, within two weeks, information about ethics investigations and complaints handled by the IG and ethics cases referred to the Department of Justice for prosecution. A follow up letter was sent on August 24, 2012, reiterating the request and asking that the IG provide information by September 7, 2012, identifying all complaints, cases, or referrals received by the IG, including ones from the Department’s Ethics Office, since January 2009, as well as documents relating to referrals to the Department of Justice. Committee majority oversight staff provided subsequent clarification to focus the IG’s response on ethics matters involving political appointees and career senior executives within the Department.

¹⁴⁰ July 20, 2010 letter to Acting Inspector General Kendall from Ranking Member Hastings and six other minority members of the Natural Resources Committee.

¹⁴¹ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, unofficial transcript at page 40.

On September 17, 2012, the IG provided a list identifying almost 200 closed ethics or public integrity investigations involving the Department's political appointees and senior executives that have been handled by the IG since January 2009. The IG has also made available for inspection by Committee majority oversight staff copies of investigative reports or other documents from 23 of these cases. However, the Committee has not yet been provided information about open cases and any referrals to the Department of Justice. The IG has also made available IG staff for interviews.

*FINDINGS:*¹⁴² During the course of its oversight of IG activities, the Committee has learned about the IG's internal organization, operations, and procedures for conducting ethics, public integrity, scientific integrity, and other investigations.

Investigations are initiated when the IG receives notice of a complaint or a potential problem from any number of avenues, including the news media, investigative field work, and tips from confidential sources or whistleblowers. The IG's Office of Investigations has a Complaint Review Group¹⁴³ that meets each week to review the complaints and tips that have been received and to determine whether an investigation should be conducted within the IG or whether the matter should be referred back to the Department or Bureau responsible.¹⁴⁴

TROUBLING EXAMPLES DEVIATED FROM STANDARD PROCEDURES

If the IG determines that a complaint warrants a full investigation, the Special Agent in Charge ("SAC") for the appropriate region where the complaint originated, or the Director of Public Integrity Division will be the team leader who will assign investigators to the matter and manage the investigation. At this point, the investigation is generally handled only by the SAC and the investigative team that the SAC has put together.

An investigation plan is created and discussed among the team members and managers, and the investigators will proceed with interviewing relevant fact witnesses and gathering documents as they deem appropriate. The investigative team is also responsible for drafting interview summaries and other investigation activity reports, and preparing final reports of the investigation. This process is documented through the IG's Case Management System ("CMS"), which allows investigators and relevant managers to track progress on a matter, upload documents relevant to the case, and generally manage the flow of information

¹⁴² The description of the investigative process is the result of interviewing several employees within the IG and reviewing thousands of pages of documents from various investigations. The IG did not provide a description of this process in writing to the Committee.

¹⁴³ The IG Complaint Review Group is composed of the regional Special Agents In Charge, the Director of Public Integrity, and the various Assistant Inspector Generals and Deputy Assistant Inspector Generals. The Deputy Inspector General and her Chief of Staff do not attend or weigh in on the Complaint Review Group's recommendations or decisions.

¹⁴⁴ When a matter is referred back to the bureau, a referral letter is drafted from the IG either directing the bureau to report back to IG on how the matter was handled or not, depending on the severity of the allegations.

within OIG. The IG investigative staff spoken to by the Committee have said the IG's typical process is to have the investigators verify the accuracy and completeness of the documents collected during an investigation, either by collecting documents directly from an individual's personal computer or from a centralized search of computer servers and email systems, rather than relying only on what a witness may have provided.

At the conclusion of the fact finding portion of an investigation, the investigators usually will draft a Report of Investigation ("ROI") that summarizes the steps taken to gather the facts, and the conclusion reached by the OIG. An ROI may suggest ways in which the Department can improve in a particular area, or, may determine based on a gathering of all available information that no wrongdoing occurred.

A significant portion of the IG Office of Investigations' caseload appears to involve matters that could be characterized as ethics, conflict of interest, or public integrity violations. The Committee's expanded oversight has paid particular attention to the IG's handling of these kinds of cases.

Federal ethics and conflict of interest laws prohibit, among other things, the misuse of federal positions for personal or financial gain, restrict the activities of former government officials, prohibit certain outside activities and income, and require the filing and disclosure of financial and investment information.¹⁴⁵ In addition, the Office of Government Ethics has issued Standards of Ethical Conduct for Employees of the Executive Branch,¹⁴⁶ and the Department of the Interior has issued supplemental ethics regulations¹⁴⁷ that, for example, prohibit certain Department employees from holding financial interests in federal resources administered or managed by the Department.

Based in the Solicitor's Office, the Department's Ethics Office manages the ethics program at the Department level, counsels Department officials on their conflict of interest, recusals, and financial disclosure requirements, and coordinates ethics compliance across the Bureaus and other offices.¹⁴⁸ The Ethics Office may refer an alleged violation to the Department's IG for further investigation, or the IG may initiate an ethics investigation on its own or in response to an outside complaint.

According to the Department, the Ethics Office has referred eight cases to the IG for further investigation since January 2009, and only one involved a senior executive and none involved a political appointee.¹⁴⁹ After an investigation is completed, the

¹⁴⁵ See generally 18 U.S.C. §§ 201-209 and 5 U.S.C. app. 4, §§ 101-111.

¹⁴⁶ See generally 5 C.F.R. part 2635.

¹⁴⁷ See generally 5 C.F.R. part 3501.

¹⁴⁸ Interview with Richard Grant, Deputy Designated Agency Ethics Official, Office of the Solicitor, Departmental Ethics Office, occurred in Committee offices on September 7, 2012 and by telephone on November 1, 2012.

¹⁴⁹ Interview with Christopher Mansour, Director, and Jason Buckner, Deputy Director, Office of Congressional & Legislative Affairs, occurred by telephone on October 5, 2012; Richard Grant, Deputy Designated Agency Ethics Official, Office of the Solicitor, Departmental Ethics Office, occurred by telephone on November 1, 2012.

IG may, in turn, refer a case to the Department of Justice for prosecution or to the Department or relevant Bureau or other office for administrative action.

In addition to the IG's questionable handling of the moratorium investigation, the Committee's expanded oversight of IG activities has identified several examples where IG investigations into politically sensitive matters appear to have deviated from the office's general case management or investigative practices or to not have been formally investigation at all. The Committee's oversight into these areas, however, was frustrated by a lack of documentation, consistent with the Federal Records Act, that would explain the basis for decisions in how cases are opened, pursued, and closed.

EXAMPLE 1 – KLAMATH SCIENTIFIC INTEGRITY COMPLAINT

BACKGROUND: Bureau of Reclamation ("Reclamation") Science Advisor and Scientific Integrity Officer Dr. Paul R. Houser was told by his supervisor, Deputy Commissioner for External and Intergovernmental Affairs, Kira Finkler, on February 8, 2012 that he had until February 10, 2012 to resign from his position with Reclamation or be terminated. Through documents obtained from Dr. Houser and from the IG, it is clear that Dr. Houser believed that the termination was in retaliation for Dr. Houser emailing an opinion that was inconsistent with the stated position of the Department and that Dr. Houser believed there was a serious concern of a violation of scientific integrity, as well as a concern of retaliatory termination.

On February 8, 2012, in response to notice of his threatened termination, Dr. Houser filed a complaint with the IG's Office of Whistleblower Protection ("WBP"). His termination became effective on February 10, 2012.

On May 30, 2012, the IG received a letter from the Committee asking for information about a variety of investigations, audits, and scientific integrity complaints, including any concerning the Klamath River basin or any reviews involving the adequacy of the science supporting the Department's plan to remove the Klamath River dams. In a July 20, 2012, response, Acting Inspector General Kendall stated the IG had not done a formal review of the Klamath science but, "Given the comprehensiveness of the governing Agreements, the transparency being given to the process, and the complete absence (to date) of any complaints in which this effort is proceeding, the OIG does not have any plans to conduct any additional reviews at this time."¹⁵⁰

In testimony before the Committee on August 2, 2012, Ms. Kendall also said she was unfamiliar with the details of one specific scientific integrity complaint involving the Department's justification for removing dams in the Klamath River basin and

¹⁵⁰ July 20, 2012 letter from Acting Inspector General Mary L. Kendall to Chairman Hastings. Four lists of cases were also included in this response, (1) Energy Cases; (2) Klamath Restoration Cases (including the Finkler case); (3) Scientific Integrity Cases (the Finkler case is not listed); and (4) Audits, Inspections, and Evaluation Reports.

therefore could not answer questions about it. “I have many people on my staff who work these issues on behalf of the Office of Inspector General. I apologize. I don’t know the details about this one.”¹⁵¹

Representative McClintock asked, “Well, you have got a row of folks behind you. Do any of them know?”¹⁵² referring to IG Chief of Staff Hardgrove, General Counsel Bruce Delaplaine, and other IG senior staff sitting behind Ms. Kendall in the Committee’s hearing room. Ms. Kendall answered, “Congressman, we would be glad to get back to you and provide details about this. I simply don’t know them today.”¹⁵³

On August 28, 2012, the IG received a letter requesting all documents related to Dr. Houser’s case. These documents were provided on a rolling basis between September 19 and October 17, 2012.¹⁵⁴ Upon receipt of the documents, the IG was asked to provide members of their team for interviews with Committee staff.¹⁵⁵

FINDINGS: According to IG documents obtained by the Committee, on September 14, 2011, Dr. Houser was asked to review a draft Department press release.¹⁵⁶ The draft press release related to the Department study on the proposal to remove four dams in the Klamath River basin and was provided to Dr. Houser by the Public Affairs Officer for Reclamation. On September 15, 2011, after studying the expert panel reviews of the Klamath River proposal, and gathering additional information, Dr. Houser emailed his analysis of the press release review to his supervisor, Deputy Commissioner for External and Intergovernmental Affairs Finkler.

In his email, Dr. Houser raised several concerns with the accuracy of the scientific data in the press release, and he mentioned that the release offered only the positive view of the dam removal, without reference to the uncertainties or

¹⁵¹ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on “Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior,” August 2, 2012, unofficial transcript at page 111.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ The emails from four IG employees were provided. No emails were produced from Assistant Inspector General for Investigations John Dupuy’s computer or from Deputy Assistant Inspector General for Investigations Scott Culver’s computer. According to the IG, the computers for Mr. Culver and Mr. Dupuy were searched and no relevant emails were found. From the email productions of the other IG employees, it is clear that there are in fact emails relevant to this matter that were sent and received by both Mr. Culver and Mr. Dupuy. Both Mr. Culver and Mr. Dupuy have stated that they did not delete the emails related to this matter. Whatever the cause of the failure to properly maintain and provide investigation records, the Committee is concerned that the IG’s record retention practices are falling short of the Federal Records Act requirements.

¹⁵⁵ The IG initially offered to make available the investigators along with the Associate Inspector General for Whistleblower Protection and the Chief of Staff collectively. The Committee rejected this offer out of concern that the presence of managers in the interviews with staff would have the potential to create a chilling effect that could limit the participant’s ability and willingness to speak freely about the case and their respective experiences. Individual conversations with several IG employees were eventually scheduled.

¹⁵⁶ Press Release “Studies Show Removing Klamath Dams Could Add Thousands of Jobs and Boost Dwindling Salmon Runs; Draft Environmental Analysis also Released, Public Comment Period Opens”.

negatives.¹⁵⁷ Dr. Houser's stated concern was that the release presented a biased view of the Klamath River dam removal benefits. In response to providing his opinion on this press release, as he was asked to do, Dr. Houser was asked by Ms. Finkler why he emailed his comments on the press release, why he chose to document his concerns via email, and told by her that he was creating discoverable records that could be subject to the Freedom of Information Act disclosures.

According to Dr. Houser, Ms. Finkler told him that "the Secretary wants to remove those dams."¹⁵⁸ Dr. Houser also received an email from Christine Karas, Deputy Area Manager, Klamath Basin Area Office, Bureau of Reclamation stating:

[P]lease carefully consider the depth of familiarity you have with the body of science surrounding Klamath dam removal before creating discoverable records of your personal opinions. All government e-mail is captured in a discoverable data base and the confidentiality notice you included is not valid on government correspondence.¹⁵⁹

Approximately one month after Dr. Houser's review of this press release, he received a negative performance rating.¹⁶⁰ At a meeting to discuss this performance rating, Ms. Finkler purportedly told Dr. Houser that his email responding to the draft press release was not in support of the organization's mission, and that the email did not contribute to a positive workplace and showed he was not a team player.¹⁶¹

In the subsequent months, Dr. Houser observed his opportunities for growth, training, and travel diminish. He was also cited for sending an unrelated email directly to David Hayes, Deputy Secretary of the Department, and for leaving the word "draft" on a memorandum that was presented to the Commissioner. On February 8, 2012, Ms. Finkler told Dr. Houser that his expertise and skill were not a good match for the science advisor position and that he had until February 10, 2012 to resign or be terminated.

IG STAFF QUESTION POLITICAL APPOINTEE'S ACTIONS

On February 8, 2012, Dr. Houser called the Office of Whistleblower Protection ("WBP") to describe his situation, ask for advice, and to make a formal complaint that he believed his termination was in retaliation for providing a scientific opinion concerning the press release.¹⁶² The Associate Inspector General for Whistleblower

¹⁵⁷ September 15, 2011 email from Dr. Paul R. Houser to Kira L. Finkler.

¹⁵⁸ February 24, 2012 Allegation of Scientific and Scholarly Misconduct and Reprisal for a Disclosure Concerning the Biased Summarization of Key Scientific Conclusions for the Klamath River Dam Removal Secretarial Determination Process; prepared by Dr. Paul R. Houser.

¹⁵⁹ September 19, 2011 email from Christine D. Karas to Paul R. Houser and Keith C. Schultz.

¹⁶⁰ Dr. Houser received a "minimally successful" rating in the category of "Mandatory Department Wide Element" but received fully successful rating for each of the "Position Specific Elements" in which he was rated.

¹⁶¹ February 24, 2012 Allegation of Scientific and Scholarly Misconduct and Reprisal for a Disclosure Concerning the Biased Summarization of Key Scientific Conclusions on the Klamath River Dam Removal Secretarial Determination Process; prepared by Dr. Paul R. Houser.

¹⁶² PI-PI-12-0238-G Case Notes File Entry of February 14, 2012.

Protection, Laurie Larson-Jackson received the complaint, and provided the relevant information to the Assistant Inspector General for Investigations, John Dupuy.¹⁶³ On February 9, 2012 the Deputy Assistant Inspector General, Scott Culver, assigned two investigators with the Office of the Inspector General's Program Integrity Division to interview Dr. Houser¹⁶⁴ and Ms. Finkler.

During Ms. Finkler's interview with the IG investigators, she defended her decision to terminate Dr. Houser's employment and confirmed that she questioned him regarding writing his opinion in an email.¹⁶⁵ The IG investigators questioned Ms. Finkler on why she would discourage the Scientific Integrity Officer from putting his scientific opinion in writing, and she repeatedly explained that emails can be misconstrued. Ms. Finkler said, "Well, I mean, I've worked in D.C. for 20 years, and I know that emails can be misconstrued, you know, you can't always – it's very easy to misrepresent something in an email."¹⁶⁶

The IG investigators questioned this analysis: "It would seem to me that there would be a lot more chance of something being misconstrued if it was just spoken back and forth, as opposed to written down. There is no ambig[u]ity."¹⁶⁷ Ms. Finkler continued to insist that emails can be misconstrued: "again, I guess, you know, misconstrue something that is in an email"¹⁶⁸; "I mean once you put something in an email, it's there forever, and it can be easily misconstrued."¹⁶⁹

Ms. Finkler requested a break, and the interview went off the record.¹⁷⁰ During the break, it was decided that the investigators were no longer going to discuss the press release or Dr. Houser's email questioning the objectivity of the scientific description, and that Ms. Finkler would review her emails and answer additional questions at a later date.¹⁷¹ The interview continued with questions about why Ms. Finkler had terminated Dr. Houser, and what justification she had for this decision. In the end she simply told the IG investigators that he was not the "right fit."

IG MANAGEMENT BECOMES PERSONALLY INVOLVED IN DIRECTING INVESTIGATION

After the IG investigators first interviewed Dr. Houser and Ms. Finkler, they were called to brief Mr. Dupuy, Mr. Culver, and Chief of Staff Steve Hardgrove. According

¹⁶³ February 8, 2012 email from Associate Inspector General for Whistleblower Protection to Assistant Inspector General for Investigations, "I just left you a detailed voicemail about the above complaint. I have a lot of information to share with you and time is of the essence. I gave Steve Hardgrove a heads up (via voicemail) on this too."

¹⁶⁴ February 9, 2012 email from Laurie Larson-Jackson to Stephen Hardgrove, "I briefed Scott and sent him a summary chronology (attached below) and three emails with attachments that I received from Mr. Houser. Scott will send an agent to interview Mr. Houser this morning."

¹⁶⁵ February 9, 2012 Finkler interview, p 37 ln 4-20.

¹⁶⁶ February 9, 2012 Finkler interview, p 38 ln 14-16.

¹⁶⁷ Id. p 39 ln 11-14.

¹⁶⁸ Id. p 38 ln 19-20.

¹⁶⁹ Id. p 41 ln 5-6.

¹⁷⁰ Id. p 43 ln 4-18.

¹⁷¹ Id.

to some sources within the IG, it was directly after this meeting on February 9, 2012 where Hardgrove gave the order to Mr. Dupuy and Mr. Culver that this investigation was not to proceed, but the two investigators assigned to this matter were not informed of this decision at this time.

On February 10, 2012, the investigator in charge of the case described the status of the case in an email to his supervisor, Director of the Public Integrity Section, Megan Wallace:

[We] conducted interviews of the complainant (Houser) and potential subj (Finkler) yesterday. After that we briefed Scott, John and Steve. This is a tough one, there is a chance he is being terminated because she/they disagree w/ his scientific opinion on the elimination of the Klamath River Dams, but it's not conclusive. He has been reprimanded for some other apparently minor incidents which are not connected to the dam issue. Bottom line, [Culver] is contacting the DOI head "science guy" today (Dr. Ralph Morgenweck) to ask his opinion. After that we will be told what to do. We had another conversation this morning with Steve Hardgrove. Our gut feeling is, if Morgenweck tells Scott there is nothing suspicious about Houser being terminated then we will probably shut this down. Will let you know.¹⁷²

On two separate occasions, February 10 and 13, 2012, the investigators interviewed the Department Scientific Integrity Officer, Dr. Ralph Morgenweck about his working relationship with Dr. Houser and whether he had any concerns about the termination.

Dr. Morgenweck described Dr. Houser as "very intelligent, follows through on commitments he makes" and stated that he feels Dr. Houser "is performing very well, in his role of scientific integrity officer."¹⁷³ Dr. Morgenweck described Dr. Houser's writing as "presented in a manner that was clear, understandable and to the point, and I felt that the work was good quality."¹⁷⁴ The IG investigators asked Dr. Morgenweck whether based on what he knew of the situation, should the IG "continue to look into, investigate further, in order to determine more of the facts?"¹⁷⁵ Dr. Morgenweck responded:

Yes, I do, and for several reasons. One is, this kind of situation is something that could potentially weigh very heavily on our reputation for scientific integrity in the Department. I think that based on what I know from our conversations, I don't see substantial concerns about Paul's performance, that would lead me, anyway – to believe that the action being proposed is commensurate with what they have relayed to you,

¹⁷² February 10, 2012 Email from Investigator to Megan Wallace.

¹⁷³ February 13, 2012 interview of Morgenweck, p 6 ln 24-25; p 7, ln 1-2.

¹⁷⁴ Id, p 7 ln 17-19.

¹⁷⁵ Id. p 9 ln 5-7.

and so, that does concern me, that the motivation behind this is potentially that issue about when he gave his scientific opinion, and that was not viewed as being a team player by the communications folks. That is a scientific integrity issue, and so, I think it does bear looking into.¹⁷⁶

According to IG documents, on or around February 13, 2012 Mr. Hardgrove made a decision, “Based on my experience and analysis of the matter, it was my opinion that Dr. Houser’s proposed termination was not a matter for the OIG to investigate.” Mr. Hardgrove listed several factors that “played into” his decision including that “Dr. Houser was a probationary SES employee,” and that “Established due process procedures were in place for Dr. Houser to utilize in addition to being informed that he could report his allegation to the Office of Special Counsel who has primary jurisdiction on reprisal allegations.”¹⁷⁷

This decision is memorialized in an undated memorandum to file created by and signed by Mr. Hardgrove. According to this memo, he made this decision based on information provided to him from the investigators “after interviewing Dr. Houser and his supervisor Kira Finkler.” There is no reference to Dr. Morgenweck being interviewed or even whether Mr. Hardgrove knew this interview occurred.

While there is no date on the memorandum itself, it states that Mr. Hardgrove made the decision “on or about February 13.” The document was uploaded into the IG case management system on September 18, 2012, seven months after the memo indicates the decision was made and more than one month after Ms. Kendall was unable to answer questions about the case at the Committee’s August 2 hearing.

It is unclear why the Chief of Staff was making decisions on whether an investigation should proceed. All information gathered from the IG shows that these types of decisions are generally made by the SAC of a particular Region, or the Program Integrity Division Director. There is no evidence that the investigators or Dr. Houser were told of Mr. Hardgrove’s decision at this time.

IG STAFF SKEPTICAL ABOUT POLITICAL APPOINTEE’S MOTIVES

On February 15, 2012, Ms. Finkler called the lead investigator on the matter and requested to be re-interviewed, specifically concerning the press release and Dr. Houser’s response to the press release.¹⁷⁸ This re-interview occurred the next day, February 16, 2012. During the second interview of Ms. Finkler, she restated her claim that emails can be misconstrued:

¹⁷⁶ Id. p 19 ln 8-23. Dr. Morgenweck also expressed concern that the science advisor for Reclamation was reporting to a political appointee responsible for communications, whose job is to present Interior in the best light at all times, not to uphold the integrity of scientific data and processes. He expressed that this line of reporting created the exact environment that the scientific integrity policies were intended to avoid and that this is something the IG could potentially remedy.

¹⁷⁷ Undated Memorandum to file from Steve Hardgrove, uploaded into CMS September 18, 2012.

¹⁷⁸ February 16, 2012 email from lead investigator to Larson Jackson.

And I know that we agreed to disagree, last week, that emails can be misconstrued, but I still stand by that, that I think emails can be misconstrued. I think that, you know, people dash off emails very quickly, and you could miss a work or something, misspell something, and then you know, once again, it's not – it's there forever, but yet, you might have dashed it off very quickly, or you might have dashed it off when you were upset and it's there.¹⁷⁹

Eventually, Ms. Finkler explained that the concern she has with emails is not that they will be misconstrued but that it will be in the *Washington Post*.¹⁸⁰ Near the conclusion of this interview, one of the investigators explained the IG's opinion of this matter in this way:

[W]e all looked at this and we feel that the reasons that you cited for terminating him are trivial, that basically, he wore shorts to work once, he gave the Commissioner a report that said "draft" that wasn't supposed to say "draft", and he sent an email to Mr. Hayes. Those are the three tangible things, you know, things that we can see and read, and then the other thing that you told us intangible's, like leadership. Well, he is not leading, and those are – that is kind of like a basket full of smoke.¹⁸¹

On February 23, 2012 the investigators were told by Ms. Wallace and Mr. Culver that the investigation was not to be pursued. No interview write-ups were completed, and no Report of Investigation was drafted. There is no documentation that memorializes when or whether Dr. Houser was informed that the IG was not going to finish the investigation they had initiated.¹⁸²

On May 2, 2012, approximately three months after Dr. Houser's complaint to the IG, Dr. Houser sent an email to Ms. Larson-Jackson and the two investigators who worked on his case asking about the status of their investigation. Ms. Larson-Jackson responded that she had already discussed with Dr. Houser that "the OIG decided against opening a formal investigation after its initial complaint."¹⁸³ Based on all interviews conducted, no one in the IG specifically remembers telling Dr. Houser or sending him correspondence that a formal investigation was not going to

¹⁷⁹ February 16, 2012 Finkler interview, p 5 ln 11-18.

¹⁸⁰ Id. p 21 ln 19-21.

¹⁸¹ Id. p 6 ln 17-22.

¹⁸² Indeed, Dr. Houser continued to provide updates and information to Ms. Larson-Jackson as though he believed she was working on his case. In a March 1, 2012 email from Dr. Houser, he provided additional troubling information about Ms. Finkler's work at Reclamation to the IG. IG was informed that Ms. Finkler previously worked for Trout Unlimited, an organization that is a signer of the Klamath Agreements that propose the removal of the dams. Based on several document requests to the IG, this potential conflict of interest was never investigated or even questioned. An Ethics Recusal document prepared by Ms. Finkler and submitted to Reclamation in April of 2010 makes no mention of this prior relationship.

¹⁸³ May 1, 2012 email from Larson-Jackson to Houser.

be opened, and Dr. Houser was under the impression until the receipt of this email that the IG was in fact investigating his case.

The IG received a letter from Congress requesting all emails, notes, and memoranda related to this case on August 28, 2012. There was no explanation in the case management system, or any of the investigators' case files, explaining why the investigation was shut down until September 18, 2012, when the undated Hardgrove memo was uploaded into the case management system.¹⁸⁴

SUMMARY: A review of the available information in this case, including information gathered from various in-person and telephonic interviews, and a review of hundreds of documents shows that the IG interviewed the complainant, and by all accounts found him to be credible and his termination to be troubling. The IG also interviewed Ms. Finkler, and by all accounts, including the recorded transcripts of her interviews, found her version of events to be incredible, and found her decision to terminate Dr. Houser to be troubling.

At this point in the investigation, IG Chief of Staff Hardgrove made a unilateral decision to shut down the investigation, a decision that is contrary to the normal course of how investigations are typically conducted within the IG, and was contrary to the opinion of every single other person with knowledge of the matter, including the Director of the Public Integrity Section, the Associate Inspector General for Whistleblower Protection, the Deputy Assistant Inspector General for Investigations, and the Assistant Inspector General for Investigations.

The decision was not communicated to the investigators on the case, who went on to interview Dr. Morgenweck twice, and conduct a follow up interview of Ms. Finkler. Only after these additional interviews are conducted are the investigators told that there will be no investigation. No justification for the termination of the investigation is included in the case management system for 7 months. It does not appear that Dr. Houser was provided this information until May 2012. According to several IG employees, the alleged wrongdoing by a political appointee against a senior scientist was exactly type of case that calls for a thorough and independent investigation, and an opportunity to follow the investigation to its conclusion.

EXAMPLE 2 – NO IG INVESTIGATION INTO APPARENT CONFLICT OF INTEREST

BACKGROUND: According to a March 17, 2012, article in the *Los Angeles Times*, Counselor to the Secretary Steve Black was instructed to recuse himself from matters involving NextEra Energy, a developer of solar and wind energy projects, due to a romantic relationship Mr. Black was reported to have had with a lobbyist for the company. In addition to his role overseeing the development and editing of

¹⁸⁴ The IG's computerized case management system records when documents are saved into the system. The Hardgrove memorandum describing the reasons for shutting down the Houser investigation was entered into the system on September 18, 2012, more than one month after Ms. Kendall was asked at the Committee's August 2 hearing about the matter.

the Drilling Moratorium Report, Mr. Black advises the Secretary on renewable energy policies and leads the Department's Renewable Energy Policy Group, a group of federal and state officials established by Secretarial order in 2009 to coordinate review and processing of renewable energy projects in California.

Among the projects NextEra is developing is the 250 mw Genesis Solar Energy Project and the 750 mw McCoy Solar Energy Project on federal land near Blythe, California managed by the Bureau of Land Management. The NextEra lobbyist previously served as Special Advisor to the Governor of California for Renewable Energy Facilities and served on the Renewable Energy Policy Group led by Mr. Black before being hired by the energy firm in July 2011.

The *Los Angeles Times* article also states Mr. Black discussed the relationship with the Department's Ethics Office in the fall of 2011 and was later told to recuse himself, but it does not state when the relationship began, when the recusal became effective, or whether the IG has investigated Mr. Black's actions to determine whether any federal ethics laws were violated.

Findings: As Acting Inspector General Kendall explained at the August 2 hearing, the IG generally decides to take on and investigate "high-impact, high-risk cases. ... Most ethics cases do fall within that."¹⁸⁵

The Department has provided information indicating that no ethics cases involving political appointees, including Mr. Black, have been referred to the IG for investigation for the past four years.¹⁸⁶ It also appears, based on the list of cases

"Steve Black, Interior Secretary Ken Salazar's alternative energy advisor, discussed his relationship with a NextEra Energy lobbyist with officials in the department's ethics office last fall (2011), an Interior spokesman said. To avoid a conflict of interest, Black was later told to recuse himself from matters involving NextEra which has more than a dozen wind and solar projects in California." – Los Angeles Times, March 17, 2012

¹⁸⁵ Testimony of Mary Kendall, Oversight Hearing of the full Committee on Natural Resources on "Oversight of the Actions, Independence, and Accountability of the Acting Inspector General of the Department of the Interior," August 2, 2012, unofficial transcript at page 40.

¹⁸⁶ Interview with Christopher Mansour, Director, and Jason Buckner, Deputy Director, Office of Congressional & Legislative Affairs, occurred by telephone on October 5, 2012; Richard Grant, Deputy Designated Agency Ethics Official, Office of the Solicitor, Departmental Ethics Office, occurred by telephone on November 1, 2012.

provided to the Committee, that the IG has not received any formal ethics complaints involving Mr. Black and does not otherwise appear to have conducted any review or investigation of Mr. Black's actions involving the NextEra Energy lobbyist to determine whether a violation of federal ethics and conflict of interest laws occurred in connection with his work on renewable energy issues for the Department.

A senior IG official has confirmed that staff within the office were aware of the allegations involving Mr. Black, as described in the *Los Angeles Times* article, but that no investigation was ever conducted to determine whether his conduct before or after the recusal was put in place violated federal ethics laws.¹⁸⁷ The official explained that there was no indication that Mr. Black had engaged in wrong doing.¹⁸⁸ However, the IG under Mr. Devaney had investigated ethics issues and potential conflicts of interest involving Bush Administration officials.¹⁸⁹

According to the *Los Angeles Times*, some renewable energy advocates, however, have expressed concern about whether Mr. Black could be effective in his role advising the Secretary on renewable energy issues and leading the Department's Renewable Energy Policy Group, given his recusal from matters concerning NextEra Energy. For example, it is unclear what Mr. Black's involvement was in developing the Department's Solar Energy Roadmap,¹⁹⁰ issued October 12, 2012, and how those actions were consistent with his ethics agreement and recusal.

EXAMPLE 3 – COMPLAINT ABOUT OFFICIAL'S ROLE IN DEEPWATER INVESTIGATION

BACKGROUND: This second case also involved alleged interference in the development of a technical document by a political appointee. A week after the Deepwater Horizon incident, the Department of the Interior and the Department of Homeland Security issued a convening order establishing the Joint Investigation Team ("JIT"). The JIT was tasked with trying to identify the factors that caused the blowout of the Macondo well and the subsequent explosion, fire and sinking of the Deepwater Horizon offshore drilling rig. Under the convening order, the JIT was to issue a report of its findings and improved safety recommendations within nine months. However, the submerged blowout preventer was not recovered until September 2010, pushing back the JIT's report.

The firm Det Norske Veritas was retained by the JIT to conduct forensic examination and testing of the blowout preventer recovered from the Deepwater Horizon rig.

¹⁸⁷ Interview with senior manager in the IG's Office of Investigations, December 4, 2012.

¹⁸⁸ *Id.*

¹⁸⁹ See, New York Times, "Interior Dept. Official's Role as Oil Lobbyist is Investigated," May 13, 2003; available at <http://www.nytimes.com/2003/05/13/politics/13INQU.html> (last accessed December 18, 2012).

¹⁹⁰ Department of the Interior Press Release, October, 12, 2012; available at http://www.blm.gov/wo/st/en/info/newsroom/2012/october/NR_10_12_2012.html (last accessed on December 5, 2012).

Det Norske Veritas completed its testing on March 4, 2011, and issued its report (in two volumes) on March 20, 2011. On April 22, 2011, the Coast Guard issued part 1 of the JIT report, focusing on the explosions and fires on, evacuations from, and sinking of the Deepwater Horizon offshore drilling rig. On September 14, 2011, the Department's Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE") issued Part 2 of the JIT report, focusing on the causes of the blowout.

According to an internal IG document reviewed by Committee majority oversight staff, a confidential source complained to the IG on March 31, 2011 that BOEMRE Director Michael Bromwich had months earlier directed members of the JIT to draft a separate report focused on the blowout preventer and that Mr. Bromwich had assigned staff from BOEMRE's Investigations and Review Unit ("IRU") to review and edit the draft report, against the objections from the JIT members.

The confidential source alleged Mr. Bromwich had directed the JIT to issue this report on April 20, 2011 – the one year anniversary of the Deepwater Horizon accident – separate from the formal investigative report being prepared by the JIT under the April 2010 convening order. The confidential source described the reasons for issuing such a report at that time as politically motivated to help justify and defend the moratorium decision, according to the IG document.

According to the confidential source, the members of the JIT objected because the investigation was still ongoing and the Det Norske Veritas report had not yet been completed. Nonetheless, Mr. Bromwich and BOEMRE Investigations and Review Unit staff insisted on such a report. The JIT members submitted a draft report to Mr. Bromwich and the IRU on March 4, 2011, according to the confidential source. That draft did not contain executive summary or conclusion sections. Two weeks later, according to the confidential source, the IRU staff returned to the JIT members a revised version of the draft report, including new executive summary and conclusion sections.

According to the confidential source, the IRU staff had removed language critical of BOEMRE and added inaccurate scientific and technical language that could decrease safety and undermine the JIT's broader work. For example, the confidential source described edits that attributed the Deepwater Horizon accident to a failure of the blowout preventer, even though the Det Norske Veritas investigation was ongoing, and deleted a discussion about subsequent inspections not identifying problems with other blowout preventers.

The IG document states the confidential source provided a copy of the revised draft report containing the IRU edits in early April 2011 and, on April 7, 2011, the Acting Inspector General was provided a copy of the draft report, which was subsequently shared with senior officials in the Department. The IG document concluded by stating the confidential source reported on April 14, 2011 that the IRU had decided against issuing a separate blowout preventer report.

FINDINGS: The IG assigned this matter a case number (PI-PI-11-0312-I) indicating it was assigned to the IG's Public Integrity Division. However, the IG report reviewed by Committee staff does not describe any investigative actions or follow up other than the Acting Inspector General sharing a copy of the draft report, and presumably the concerns from the confidential source, to the Department's senior managers. The list of ethics and public integrity cases provided by the Department in September 2012 includes this investigation and shows that the IG opened the case file on March 25, 2011 and closed it on May 17, 2011.

According to a senior official within the office, the IG did not conduct a formal investigation into Mr. Bromwich's involvement,¹⁹¹ including considering whether such actions or editing would violate the Department's scientific integrity policy.¹⁹² The official did not recall the IG doing a formal investigation "because nothing had really happened yet, I think was some of the thinking, that this was just back and forth of editing a document, and these folks were coming to us, sharing their concerns that they had more technical expertise that had not been represented in this critical document." The IG official added that "eventually the issue went away ... and the issue was resolved" because the report was never issued and the concerns of the JIT members had been addressed internally.¹⁹³

However, the official did note the similarities with the editing of the drilling moratorium report: "It really was kind of ironically about editing a report, the same thing we are talking about with [the drilling moratorium report]. Bromwich was kind of in the same role with the people that were preparing the report and they were taking out information that people with the more technical knowledge thought should be in there, and they were feeling the pinch of that."¹⁹⁴

Before the IG provided a copy of the case document for review, it consulted with the Department of Justice litigation team working on the Deepwater Horizon enforcement case to determine whether the document could be provided to Committee staff for review. The Department of Justice did not object.

The IG official denied that any favoritism was shown to the Department or Mr. Bromwich in the handling of this matter or that the case was handled out of the normal course, given the allegations and personalities involved.¹⁹⁵

However, it is troubling that the IG did not comprehensively investigate the allegations that a senior political official had been accused of possibly interfering in the Joint Investigation Team's Deepwater Horizon investigation. Instead, the matter

¹⁹¹ Interview with senior manager in the IG's Office of Investigations, December 4, 2012.

¹⁹² Departmental Manual, section 305 DM 3, "Integrity of Scientific and Scholarly Activities," effective January 28, 2011.

¹⁹³ Interview with senior manager in the IG's Office of Investigations, December 4, 2012.

¹⁹⁴ Id.

¹⁹⁵ Id.

seems to have been resolved by the Acting Inspector General discretely informing the Department of the concerns, and the Department putting a stop to the problematic activity. Although the IG may have achieved a desirable outcome with minimal embarrassment to the Department, this low-key, accommodating approach is an example of the IG falling short of its obligations under the IG Act to report to Congress about problems with the Department's operations and activities.

SUMMARY: The IG under its current leadership does not appear to be pursuing investigations involving Obama Administration political appointees in the same manner or with the same assertiveness as was previously done. In several examples identified during the Committee's oversight, the IG has not fully investigated allegations of misconduct that appear similar to cases the previous Inspector General had pursued, often leading to sensational headlines, management reforms, and prosecution. In choosing to handle problems informally, often without a formal investigation or public report, the IG is frustrating Congressional oversight of the Department and the IG and leaving the impression that this Administration is receiving a pass on potential wrong doing.

CONCLUSION

An Inspector General is expected to serve as an independent watchdog, to protect against fraud, waste, and abuse, and to keep both the Department head and the Congress informed of problems within the Department. However, as this Majority Staff Report has found, Acting Inspector General Kendall and Chief of Staff Hardgrove have blurred the line between being an independent watchdog and serving as an informal advisor and collaborator on Department policy initiatives.

Acting Inspector General Kendall has publicly stated she has sought to establish a more collaborative relationship with the Department than the IG previously had, something that has not gone unnoticed by the Department's political appointees. Ms. Kendall's accommodating approach has raised questions among the public and Congress, as well as among the IG's professional career staff who are dedicated to holding the Department accountable, about whether the IG's independence has been compromised, and whether the IG has held the Obama Administration to the same standards of accountability as previous administrations were held.

The Committee's investigation has identified numerous troubling examples that call into question Ms. Kendall's management of the IG during the almost four years she has served as Acting Inspector General:

- IG staff have been hampered in pursuing investigations involving political appointees or Obama Administration priorities;
- The Acting Inspector General informally advising senior Department officials of potential problems without conducting formal investigations or issuing reports to the public and Congress;
- Ongoing questions about the accuracy and completeness of testimony Ms. Kendall provided to the Committee in 2010 and 2012; and
- Missing or inadequate documentation of how IG investigations were handled.

Ms. Kendall has expressed an interest in being made the permanent Inspector General for the Department, notwithstanding the potential conflict of interest inherent in having the fate of her appointment beholden to the same officials she is supposed to oversee. However, the White House's inaction in nominating a permanent Inspector General and leaving Ms. Kendall to serve as the Acting Inspector General for almost four years has only exacerbated the problem with the Department's IG. The President should not delay any further in acting to nominate someone who can serve as the independent watchdog the Department deserves and who does not have the questionable history and judgment Ms. Kendall has brought to the position.