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Chairman Doc Hastings

ETHICS UNDER REVIEW: *An Oversight Investigation into the Department of the Interior's Ethics Program and How Recusals are Managed for Senior Officials*

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Executive Summary

For more than two years, the Committee's Majority oversight staff has investigated the Department of the Interior's ethics program. The investigation has found:

- The Department has made improving its ethics program a goal in recent years, but challenges remain in changing a bureaucratic culture to make ethical conduct, accountability, and transparency a priority.
- There are significant delays in the time period for reviewing financial disclosure forms used to identify potential conflicts of interest. In two examples, the Department's ethics officials took more than 400 days to complete their review and approve disclosure forms for two senior officials.
- The Department has not provided copies of financial disclosure forms and written recusals for a number of officials. It is unclear, for example, how a number of officials who joined the Department from the private sector, law firms, and advocacy groups recused themselves from matters involving their former employers or clients.
- Although former BLM Director Robert Abbey was recused from matters involving his former consulting firm, he continued to interact with his former business partners on both personal matters and official business. The former business partner was often contacted to act as a go between with Mr. Abbey and appears to have served as an informal advisor.
- Former Counselor to the Secretary Steve Black promoted a renewable energy project to the White House involving his girlfriend's employer and reported his relationship to Department ethics officials only after meeting with a company official and receiving an email discussing her transfer from the company's California office to Washington, D.C.
- In the six months between when Mr. Black first reported his relationship with a lobbyist for the company and he was advised to recuse himself, he continued to work on specific matters involving the company and meet with senior company officials.
- The Department's senior ethics official says she was directed not to interact with or provide advice directly to political appointees without receiving management approval.
- The Department lacks a systematic way of tracking recusals, which increases the potential that officials will be contacted about or become involved in matters they are recused from.

Background

The Department of the Interior (“Department” or “DOI”) has approximately 70,000 employees and is responsible for managing more than 530 million acres of land, more than 400 national park units and 560 wildlife refuges, and more than 470 dams and 330 reservoirs.¹ More than 20 percent of the country’s energy is derived from lands and resources managed by the Department, and almost \$15 billion in revenue is collected for the Treasury from energy and mineral development, timber sales, grazing, and other activities involving the Department and the resources it manages.²

The Department – from top leadership to rank and file employees – has also been involved in a number of ethical scandals over the years, from the Teapot Dome scandal in the 1920s³, to claims of politicized Indian gaming decisions in the 1990s⁴, and undue influence by lobbyists⁵ and lax oversight and wrongdoing by the Department’s regulators in the previous decade.⁶

In 1999 and again in 2003, the Department’s Office of Inspector General (“OIG”) identified several problems with the management and operation of DOI’s ethics program.⁷ Secretary Gale Norton ordered a reorganization of the Department’s ethics program in 2003, bringing the Ethics Office under the supervision of the Office of the Solicitor and clarifying the authorities of various ethics officials and identifying the line of responsibility for providing ethics advice.⁸

A review by the Office of Government Ethics in 2005 recognized improvements to the administration of the Department’s Ethics Office, but

¹ U.S. Department of the Interior, *FY 2015 Budget Highlights Departmental Overview*, at DH-10, available at

<http://www.interior.gov/budget/appropriations/2015/highlights/upload/overview.pdf>.

² *Id.*

³ See U.S. Senate, *Senate History: Senate Investigates the “Teapot Dome” Scandal*,

https://www.senate.gov/artandhistory/history/minute/Senate_Investigates_the_Teapot_Dome_Scandal.htm.

⁴ See NY Times Opinion, *The Bruce Babbitt Case*, NY Times, August 13, 1999, available at

<http://www.nytimes.com/1999/08/13/opinion/the-bruce-babbitt-case.html>.

⁵ See Washington Post Investigation, *Investigating Abramoff – Special Report*,

<http://www.washingtonpost.com/wp-dyn/content/linkset/2005/06/22/LI2005062200936.html>.

⁶ See September 9, 2008 Memorandum from Earl E. Devaney, Inspector General, to Secretary Kempthorne, Subject: OIG Investigations of MMS Employees, available at

<http://www.doi.gov/oig/reports/upload/SmithGregory-2008-09-10.pdf>.

⁷ See May 5, 2005 letter from Jack Covalleski, Deputy Director at Office of Government Ethics, to Shayla F. Simmons, Designated Agency Ethics Official for the Department of the Interior, at 2-3, available at <http://www.oge.gov/DownloadAsset.aspx?id=2147488667>.

⁸ U.S. Department of the Interior, Secretarial Order 3247, August 7, 2003. The directive transferred the Ethics Office from the Office of Assistant Secretary for Policy, Management and Budget to the Office of the Solicitor. The Order was amended on June 28, 2004, March 31, 2006, and September 27, 2006.

recommended several areas for improvement, including that the Department needed to do a better job reviewing financial disclosure forms and identifying and resolving potential conflicts of interest.⁹

Upon taking over as Secretary in January 2009, Ken Salazar vowed to move the Department beyond the ethics scandals that had dogged it in recent years.¹⁰ In a personal address to DOI employees on January 22, 2009, Secretary Salazar stated:

*In the last few years, this Department has suffered because of ethical lapses and criminal activity at the highest level. That doesn't mean to say that the people of the Department of the Interior are bad people, because they are not. You know how one apple in a bushel can spoil the whole bushel? There has been, essentially, a picture of this department that has been painted unfairly on the backs of career employees because of the actions of political appointees. That era is now changing. A new era starts today.*¹¹

Secretary Salazar followed days later with a memorandum to all DOI employees stressing the importance of complying with all Federal ethics and conflict of interest laws:

*But mere compliance with minimum ethics requirements is not enough to fully meet our obligations to uphold the deep and abiding trust that the public places in all civil servants. It is essential that we fully honor President Obama's commitment to the highest standards of conduct and decision making. ... All of us face ethical choices every day in the conduct of our business. ... It is important that you seek ethics advice early, before taking action, and that you provide a complete and honest description of all of the relevant facts.*¹²

On August 31, 2009, Secretary Salazar issued an Order “to enhance and promote an ethical culture throughout the Department,” directing all employees to become familiar with Departmental ethics policies, “to maintain especially high

⁹ See May 5, 2005 letter from Jack Covalleski, Deputy Director at Office of Government Ethics, to Shayla F. Simmons, Designated Agency Ethics Official for the Department of the Interior, at 1-2.

¹⁰ See Chris Frates, *Department of Interior: Ken Salazar*, Politico, Jan. 13, 2009, available at <http://www.politico.com/news/stories/0109/17245.html>; Associated Press, *Salazar Pledges to Review Interior Scandals*, Jan. 28, 2009, available at <http://www.foxnews.com/politics/2009/01/28/salazar-pledges-review-interior-scandals/>.

¹¹ U.S. Department of the Interior, *Remarks of Secretary Ken Salazar All-Employees Meeting*, Jan. 22, 2009, available at http://www.doi.gov/news/speeches/2009_01_22_speech.cfm.

¹² January 26, 2009 memorandum from Secretary Salazar to All DOI Employees, subject: Ethical Responsibilities, available at: http://www.blm.gov/wo/st/en/info/newsroom/2009/january/nr_01_29_2009.print.html.

standards of honesty, integrity, [and] impartiality” and to seek advice from ethics officials when questions arise.¹³

Overview of Federal Ethics Laws and Conflict of Interest and Impartiality Rules

Executive Orders 12674 and 12731, issued by President George H.W. Bush, established 14 principles of ethical conduct for government employees, and Executive Order 13490, issued by President Barack Obama, imposes additional requirements on political appointees including that they take an “ethics pledge.”

Ethics laws are divided into criminal and civil matters. For example, bribery and participation in matters that would affect an individual's financial interest are criminal actions, prohibited under 18 U.S.C. § 201 and § 208, respectively. A federal officer or employee can be prosecuted for personally participating in a particular matter which he knows will financially benefit him or someone he has a covered relationship with. In contrast, the requirement to file financial disclosure reports at 5 U.S.C. app. 4 §§ 101-111, is generally subject to civil penalties.

Another source of ethics rules is found in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, which the Office of Government Ethics issued in 1992. These regulations impose restrictions on the acceptance of gifts, outside sources of income, disqualifying financial interests, misuse of position, seeking employment, and impartiality.

Even if an employee's conduct would not be considered a prohibited conflict of interest, it may still raise a question of impartiality that would require the employee's disqualification or recusal. Under this “catch all” provision, found at 5 C.F.R. § 2635.502, an employee should not participate in a particular matter which he knows is likely to affect the financial interests of a member of his household or someone with whom he has a covered relationship, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter.

An agency designee may also make an independent determination that a reasonable person knowing all the facts would question the employee's impartiality. If such a determination is made, the employee must not participate in the matter, unless the designee specifically authorizes the employee to continue participating in that matter. If disqualified, an employee is encouraged to inform his supervisors and coworkers, but oral notification is generally sufficient and written notice of disqualification is generally not required to document an employee's recusal.

Source: Office of General Ethics, available at: <http://oge.gov/Laws-and-Regulations/>

Despite these statements and initiatives, Department officials have continued to run afoul of ethics laws and to be investigated in connection with the performance of their official duties.¹⁴

¹³ U.S. Department of the Interior, Secretarial Order 3288, August 31, 2009.

¹⁴ See U.S. Department of the Interior: Office of Inspector General, *Investigative Report: Steve Henke*, June 7, 2010, available at <http://www.doi.gov/oig/reports/upload/Henke.pdf>; U.S. Department of the Interior: Office of Inspector General, *Investigative Report: Cheryl Brown Henderson*, June 16, 2011, available at <http://www.doi.gov/oig/reports/upload/BrownHendersonPublic.pdf>; U.S. Department of the Interior: Office of Inspector General, *Investigative Report: Anthony Babauta*, June 4, 2014, available at <http://www.doi.gov/oig/reports/upload/BabautaPublic1.pdf>.

The Director of the Department's Ethics Office serves as the Designated Agency Ethics Official ("DAEO"), under a delegation of authority from the Secretary and the Solicitor¹⁵ and in accordance with the authorities vested in the position by the federal ethics laws and regulations.¹⁶ The Ethics Office is responsible for legal counseling and legal interpretations of ethics laws and regulations, reviewing and certifying financial disclosure forms, and issuing waivers for employees in the Immediate Office of the Secretary, under the Assistant Secretary for Policy, Management and Budget, the Solicitor's Office, and political appointees.¹⁷ According to a recent organizational chart for the Office of Solicitor, the Ethics Office is currently based out of and under the immediate supervision of the Deputy Solicitor for General Law.¹⁸

The Department's DAEO is Melinda Loftin, a member of the Senior Executive Service appointed by Secretary Dirk Kempthorne in 2006.¹⁹ Ms. Loftin is assisted by two deputies, Richard Grant and Edward McDonnell, as well as three other attorneys and four ethics specialists who also work in the Ethics Office.²⁰ For fiscal year 2014, the Ethics Office had an enacted budget of almost \$1.5 million,²¹ an increase of almost \$350,000 over the enacted fiscal year 2010 budget.²²

The heads of individual Department bureaus are also responsible for rendering ethics advice to their respective agencies, with assistance from Deputy

¹⁵ U.S. Department of the Interior: Departmental Manual, Part 110 DM 2, at 2.2.C., *available at* <http://elips.doi.gov/ELIPS/PDF/0a52nv450qtvvq55li2tguqr/66/Chapter%20%202%20OFFICE%20OF%20THE%20SOLICITOR.pdf>.

¹⁶ See 5 C.F.R. § 2638, Subpart B.

¹⁷ U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2015: Office of the Solicitor*, at SOL-25, *available at* http://www.doi.gov/budget/upload/FY2015_SOL_Greenbook.pdf. Compare to U.S. Department of the Interior: Departmental Manual, Part 110 DM 2, at 2.2.C., *available at* <http://elips.doi.gov/ELIPS/PDF/0a52nv450qtvvq55li2tguqr/66/Chapter%20%202%20OFFICE%20OF%20THE%20SOLICITOR.pdf>.

¹⁸ U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2015: Office of the Solicitor*, at SOL-1, *available at* http://www.doi.gov/budget/upload/FY2015_SOL_Greenbook.pdf. However, prior to fiscal year 2014, the organizational chart for the Office of the Solicitor shows the Ethics Office directly reported to the Solicitor. See U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2013: Office of the Solicitor*, at SOL-1 *available at* http://www.doi.gov/budget/appropriations/2013/upload/FY2013_SOL_Greenbook.pdf.

¹⁹ U.S. Department of the Interior, *Secretary Kempthorne Announces Selection of Melinda Loftin as New Director of Interior Ethics Office*, October 17, 2006, *available at* http://www.doi.gov/news/archive/06_News_Releases/061017a.html.

²⁰ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

²¹ U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2015: Office of the Solicitor*, at SOL-25, *available at* http://www.doi.gov/budget/upload/FY2015_SOL_Greenbook.pdf.

²² U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2010: Office of the Solicitor*, at SOL-30, *available at* http://www.doi.gov/budget/appropriations/2010/upload/FY2010_SOL_Greenbook.pdf.

Ethics Counselors in each bureau and in coordination with Ms. Loftin and the Ethics Office.²³

The Department's Ethics Office coordinates closely with the Office of Government Ethics ("OGE"), the independent agency charged with overseeing implementation of federal ethics laws and regulations, including the government wide Standards of Ethical Conduct for Employees of the Executive Branch.²⁴ The Ethics Office is a compliance office, not a law enforcement organization.²⁵ Instead, the OIG investigates potential violations of ethics law by Department employees, with support from the Ethics Office.²⁶

²³ U.S. Department of the Interior, Secretarial Order 3288, August 31, 2009, at 5.b.

²⁴ U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2015: Office of the Solicitor*, at Sol-28, available at http://www.doi.gov/budget/upload/FY2015_SOL_Greenbook.pdf.

²⁵ *Id.* at Sol-5..

²⁶ *Id.* at at Sol-28 to 29. *See also* U.S. Department of the Interior: Departmental Manual, Part 110 DM 2, at 2.2.C.

Summary of Oversight Activities

Since 2012, the Committee on Natural Resources (“Committee”) has been examining the operation of the Department’s Ethics Office, how these promised reforms are being implemented, and how political appointees and senior career officials are managing potential conflicts and complying with Federal ethics laws. Unethical behavior has consequences not only for the officials involved, who may face jail, fines, and job loss, but also for the Department itself, leading to avoidable litigation, loss of public trust, and waste of taxpayer dollars.

The Committee’s oversight has focused on how the Department screens for potential conflicts of interest, ensures impartiality in its decisions, and develops and implements recusals. An important element of this process is the review of financial disclosure forms submitted by new employees and updated annually thereafter. For example, the Committee has reviewed hundreds of financial disclosure forms that senior political appointees are required to file with the Department, as well as a number of ethics agreements and recusals.

One specific case study that the Committee has been reviewing involves how the recusal for Robert Abbey, the former Director of the Bureau of Land Management (“BLM”), was developed and implemented. Before being nominated and confirmed as BLM Director in 2009, Mr. Abbey co-owned a land consulting firm based out of Nevada. Earlier in his career, Mr. Abbey had worked for BLM, including as Director of BLM’s Nevada state office. Mr. Abbey announced his resignation from the Department in May 2012²⁷ and rejoined his former consulting firm as a named partner the very next month.²⁸ According to the *Las Vegas Review-Journal*, the Department requested the Office of Inspector General investigate a deal that had been negotiated by Mr. Abbey’s business partners in which BLM agreed to sell 480 acres of federal land to a private developer for use as a sports complex in Henderson, Nevada.²⁹ Mr. Abbey and his business partners have denied any wrongdoing, but BLM cancelled the transaction in 2013.³⁰

Another case study involves Secretary Salazar’s own Counselor, Steve Black, who coordinated renewable energy policy for the Department, among other duties.

²⁷ U.S. Bureau of Land Management, *BLM Director Bob Abbey to Retire After 34 Years of Public Service*, available at

http://www.blm.gov/ut/st/en/info/newsroom/2012/may/blm_director_bob_abbey.html.

²⁸ Abbey, Stubbs, and Ford, LLC, *Meet the Partners: Profile of Robert (Bob) V. Abbey*, available at

<http://www.abbeystubbsfordllc.com/robert-bob-abbey.htm>.

²⁹ Alan Snel, *Henderson stadium land sale under federal investigation*, *Las Vegas Review-Journal*, February 9, 2013, available at <http://www.reviewjournal.com/news/crime-courts/henderson-stadium-land-sale-under-federal-investigation>.

³⁰ Alan Snel, *BLM terminates controversial land deal in Henderson*, *Las Vegas Review-Journal*, May 11, 2013, available at <http://www.reviewjournal.com/news/las-vegas/blm-terminates-controversial-land-deal-henderson>.

According to a March 17, 2012 article in the *Los Angeles Times*, Mr. Black had been directed to recuse himself from matters involving NextEra Energy, Inc. due to a romantic relationship he was having with a lobbyist for the company, Manal Yamout.³¹ The article left a number of important questions unanswered about how the recusal was developed and implemented and whether Mr. Black had fully complied with Federal ethics laws concerning his involvement in NextEra matters.

The Committee has also focused on the OIG's role in investigating potential violations of ethics laws. At an August 2, 2012, Full Committee oversight hearing Deputy Inspector General Mary Kendall was asked several questions about the OIG's interactions with the Department's ethics program and the steps taken to investigate potential violations of federal ethics and conflict of interest laws. "The process differs almost every case," Ms. Kendall testified. "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."³²

Committee staff received a briefing from the Department's Ethics Office in September 2012. Requests were then made to both the Department and the OIG for information about the operations of the Ethics Office and ethics-related investigations involving political appointees and career senior executives that had been referred to or pursued by the OIG.

On September 25, 2012, a letter was sent to the Department formally requesting copies of any referrals or memoranda from the Ethics Office to the OIG concerning alleged violations of Federal ethics laws. The Department refused to provide copies of the requested documents but informed Committee Majority oversight staff that the Ethics Office had referred only eight cases to the OIG for further investigation since January 2009, and only one involved a senior executive and none involved a political appointee.³³ In September 2012, the OIG 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 OIG since January 2009.³⁴

³¹ Julie Cart, *Energy advisor asked to recuse himself*, LA Times, March 17, 2012, Part AA, pg. 4.

³² *Oversight Hearing on "Oversight of the Actions, Independence and Accountability of the Acting Inspector General of the Department of the Interior" before the H. Comm. On Natural Resources*, 112th Cong., at 22, (Ms. Kendall response to Mr. Broun), available at <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg75493/pdf/CHRG-112hhrg75493.pdf>.

³³ October 5, 2012 interview with Christopher Mansour, Director, and Jason Buckner, Deputy Director, Office of Congressional & Legislative Affairs (Committee staff notes); November 1, 2012 interview with Richard Grant, Deputy Designated Agency Ethics Official, Office of the Solicitor (Committee staff notes).

³⁴ As Mr. Black was a political appointee, it would appear based on the information provided by the Department that the Ethics Office did not make a referral to the OIG to investigate Mr. Black's involvement in NextEra projects and his subsequent recusal. Mr. Black's name also did not appear on the list of closed cases provided by the OIG. A senior OIG official later informed Committee Majority oversight staff that OIG staff were aware of the allegations involving Mr. Black, as described in the *Los*

On March 14, 2013, the Committee sent a letter to the Department renewing its oversight into the Department's ethics program for the 113th Congress. The letter also requested five categories of documents: (1) copies of training materials used by the Ethics Office to brief political appointees or senior career executives; (2) copies of financial disclosure forms for senior political appointees; (3) copies of ethics agreements for senior political appointees; (4) documents concerning the development and implementation of Mr. Black's recusal and his work on several NextEra projects; and (5) documents concerning ethics advice given to Mr. Abbey and communications between specific Department officials and Mr. Abbey's former business partners.

Secretary Salazar announced his resignation as Secretary in early 2013, and Sally Jewell was sworn in as Secretary on April 12, 2013. The Department first responded to the Committee's March 2013 document request on April 16, 2013, providing copies of the ethics training materials, followed by copies of financial disclosure forms and ethics agreements³⁵ for senior political appointees on April 30, 2013 and May 17, 2013.

A letter was sent to Secretary Jewell on May 9, 2013 welcoming her to the Department and informing her about a number of unresolved oversight requests from the Committee, including the one for ethics materials. On May 22, 2013, the Department made 16 documents related to Mr. Abbey's financial disclosure forms and recusals available for review by Committee Majority oversight staff. The Department also informed Committee staff that Mr. Black had recently resigned from the Department. A follow-up letter was sent on May 28, 2013 requesting that the Department take steps to preserve Mr. Black's documents and complaining about the delay in receiving any of his records.

Angeles Times article, but that no investigation was ever conducted to determine whether his involvement in NextEra matters violated Federal ethics laws. The official explained that based on the article there was no indication that Mr. Black had engaged in wrong doing. The Committee's Majority Office of Oversight and Investigation issued a staff report in February 2013 about the OIG's lack of independence, citing its lack of investigation into Mr. Black's recusal as but one example of a more accommodating and cooperative relationship between the Department's senior political leaders and the OIG under the leadership of Deputy Inspector General Kendall and Chief of Staff Steve Hardgrove.

³⁵ The Department initially interpreted the term "ethics agreements" narrowly to mean only the formal ethics agreements issued by Senate confirmed political appointees and provided copies of ethics agreement for 17 such appointees in the May 17, 2013 production. Committee oversight staff clarified in a May 17, 2013 email to the Department's Office of Congressional and Legislative Affairs the term "ethics agreement" in the original request was not meant to be a term of art and should be "used generically to cover any recusals, notices, or agreements between an individual and the Department concerning how an employee would recuse him or herself or otherwise take action to avoid any real or perceived conflict of interest." The Department subsequently agreed to the broader interpretation to include recusals, conflict lists, and other screening documents issued by other political appointees. These recusals were not provided until a year later.

On June 4, 2013, the Department made its first production of documents about the development of Mr. Black's recusal, prompting a follow-up letter on June 12, 2013 that asked a series of questions about the recusal process and requested interviews with two Department ethics officials (Melinda Loftin and Edward McDonnell), Mr. Black's deputy (Janea Scott), and the Principal Deputy Director of BLM (Neil Kornze). That letter also complained about the Department's failure to provide copies of any documents about Mr. Abbey or the recusals for other political appointees.

The Department provided narrative responses to several of the questions about Mr. Black's recusal on July 3, 2013 (the day before the Fourth of July holiday). Chairman Hastings and Secretary Jewell met on August 1, 2013 to discuss unresolved oversight matters, including the March 2013 ethics request, followed by a letter from Chairman Hastings on August 2, 2013 concerning the unanswered interview requests among other matters. No additional documents were provided until August 30, 2013 (the Friday before the Labor Day weekend).

On September 25, 2013, more than six months after the initial document request was sent, the Department provided additional documents about Mr. Black's interactions with the Ethics Office and the development of his recusal.³⁶

A letter was sent to the Department on November 21, 2013 seeking documents from seven Department officials concerning Mr. Black's recusal from NextEra matters, as well as objecting to redactions made by the Department. The same day, a letter was sent to NextEra requesting copies of communications between the company and Mr. Black, Ms. Scott, and Mr. Kornze, and copies about Ms. Yamout's transfer from NextEra's California office to Washington, D.C. NextEra hired Wilmer Cutler Pickering Hale and Dorr LLP³⁷ as counsel to represent it in responding to the Committee's request.

On January 14, 2014, the Department provided a document production that "complete[d] the Department's response to the requests related to Bob Abbey that were outlined in the Committee's letter of March 14, 2013." It included copies of the documents the Department had previously allowed Committee staff to review seven months earlier.

On January 16, 2014, the Committee voted 26-14 to authorize the Chairman to issue subpoenas for documents and testimony in four matters, including: "Apparent conflicts of interest by current and former Department of the Interior

³⁶ An unredacted copy of an February 2012 memorandum from Mr. Black to Ms. Loftin was provided for review by Committee Majority oversight staff on November 14, 2013.

³⁷ Former Secretary of the Interior Ken Salazar works for WilmerHale as a partner in its newly opened Denver office. See WilmerHale, *Ken Salazar*, http://www.wilmerhale.com/ken_salazar/. See also, Jennifer Dlouhy, *Salazar navigates ethics limits in new role*, Fuel Fix, June 11, 2013, <http://fuelfix.com/blog/2013/06/11/salazar-navigates-ethical-limits-in-new-role/>.

employees in connection with their responsibilities for administration of public lands generally.”

Shortly thereafter, the Department finally agreed to make Ms. Loftin available for an interview with Committee Majority and Minority oversight staff on February 11, 2014. Eleven months after the original document request was sent and on the eve of the interview with Ms. Loftin, the Department provided additional documents, including a copy of a redacted memorandum from Mr. Black to Ms. Loftin dated October 11, 2011 discussing his work on NextEra matters and relationship with Ms. Yamout.

On February 14, 2014, a letter was sent to the Department requesting information about the development and implementation of a recusal issued by Ms. Scott – also in March 2012 and also involving NextEra due to her personal relationship with the same NextEra lobbyist, Ms. Yamout. A letter was also sent directly to Ms. Scott, who currently serves as a Commissioner on the California Energy Commission, seeking information about her recusal from NextEra.

On February 21, 2014, Committee Majority oversight staff contacted David Markarian, NextEra’s (former) Vice President for Government and Regulatory Affairs and Ms. Yamout’s supervisor at the company, to request a voluntary interview. Through counsel with Akin Gump Strauss Hauer & Feld LLP, Mr. Markarian declined the voluntary interview request. NextEra, through its counsel, made documents available for *in camera* review by Committee Majority staff on February 24, 2014. Committee Majority and Minority staff interviewed Ms. Loftin’s current supervisor, Deputy Solicitor for General Law Edward Keable, on February 28, 2014.

The Department did not release any additional ethics documents until May 5, 2014, when it provided copies of recusals from 2009 to 2013 for 13 officials, in addition to copies of the formal ethics agreements for Senate confirmed political appointees that had been provided the year before.

On May 6, 2014, Committee Majority staff made an oral request with the Department’s congressional affairs staff for Secretary Salazar’s travel records for a trip made to California and Nevada in May 2012 with Mr. Abbey to visit several renewable energy projects and for Mr. Salazar’s records for the entire month of March 2013,³⁸ which included a trip to California for several renewable energy meetings that Mr. Black had also attended. Majority staff interviewed Mr. Black by telephone on May 9, 2014.

³⁸ The travel records for Secretary Salazar are posted on the Department’s website. U.S. Department of the Interior, *Travel Records*, <http://www.doi.gov/foia/os/os-foia-library-travel-records.cfm>. The only months not posted online are March 2013 and February 2009. The May 2012 records are already posted on line, and Committee staff asked whether the document set was complete. The Department later confirmed that it did not have any additional documents concerning the trip in question.

On May 21, 2014, the Department provided additional documents about the implementation of Mr. Black's recusal and wrote, this "complete[s] the Department's response to the Committee's letters dated March 14, 2013 and November 21, 2013." Many of the documents were redacted.

The following day, May 22, 2014, Committee Majority and Minority staff interviewed current BLM Director Kornze, who admitted that he had discussed his potential conflicts with the Ethics Office and issued a list of recusals to the BLM Chief of Staff in January 2011 when he joined the Department as a senior advisor to then BLM Director Abbey. The Department had previously provided Mr. Kornze's financial disclosure forms but no recusals for him. Later that day, Committee staff sent an email to the Department's congressional affairs staff formally requesting a copy of Mr. Kornze's recusal, and inquiring about the missing March 2013 travel records. The Department's congressional affairs staff initially denied that Mr. Kornze's recusal was responsive to the Committee's request and claimed the travel records would need to be compiled.

Committee Majority and Minority staff interviewed Art Gary, the former Deputy Solicitor for General Law, on May 27, 2014.

The Department finally provided documents about Mr. Kornze's recusal and the March 2013 travel records the afternoon of July 3, 2014 (again, a document production on the day before a Federal holiday). The Department has not clarified whether additional recusals exist for other officials, and it has not revised its statement that its response to the Committee's original March 2013 request is complete.

The Department produced documents concerning Ms. Scott's recusal on July 28, 2014 – five months after they were requested. More than half of the documents provided were redacted. A letter was sent on August 5, 2014 seeking copies of financial disclosure forms and recusals filed with the Department since the Committee's March 2013 request, as well as requesting clarification about whether recusals for certain officials existed and if so why they had not yet been provided.

In sum, the Committee has since the fall of 2012 sent more than half a dozen letters to the Department requesting information about the Ethics Office and the development and implementation of recusals for several senior officials, including former BLM Director Robert Abbey and Counselor to the Secretary Steve Black. Over the past 16 months, the Department has provided more than 16,000 pages of documents. The majority of the documents relate to Mr. Black's recusal and his involvement in renewable energy issues generally, followed by copies of financial disclosure forms for senior Department officials that are required by law to be made publicly available.

However, a number of key documents were provided in redacted form only or made available for review by Committee staff but have never been provided in full to the Committee. Recently questions have also arisen about the adequacy of the Department's search for recusals for other senior officials and the accuracy of its statement that its response is complete.

The Committee first requested interviews with several Department officials in June 2013, but the Department agreed to make staff available only after the Committee voted to authorize the issuance of subpoenas in January 2014. Committee staff conducted interviews with five current or former Department officials in 2014, four of which were conducted jointly with Majority and Minority oversight staff. The Department also briefed Committee Majority staff about the Ethics Office's organization and activities in late 2012.

This report outlines the findings of the Majority staff's oversight investigation to date and sheds new light on how the Department identifies and manages conflicts of interest for senior officials.

Oversight Findings

Based on documents and interviews with key witnesses, the Majority staff's oversight investigation has identified weaknesses in how the Department screens for potential conflicts of interest and develops and implements recusals. Delays in screening financial disclosure forms and issuing ethics advice may allow officials to continue working on matters that either raise a conflict of interest or, at a minimum, create an appearance of impartiality. The Department also lacks a systematic method for identifying and tracking recusals, which increases the risk that officials continue working (intentionally or not) on matters from which they are or should be recused.

Financial Disclosure Reporting Is a Foundation of the Ethics Program

Federal law requires several categories of Executive Branch officials to file financial disclosure reports when they begin their service, annually thereafter, and upon termination.³⁹ Financial disclosure forms submitted by senior political appointees and career officials, also known as the OGE Form 278, are considered public. Financial disclosure forms for lower level officials are considered confidential and exempt from public disclosure. On the importance of the financial disclosure reporting requirements, the Office of Government Ethics has opined:

Although a financial disclosure report sometimes reveals a violation of law or regulation, the primary purpose of disclosure is to assist agencies in identifying potential conflicts of interest between a filer's official duties and the filer's private financial interests and affiliations. Once a reviewing official identifies a potential conflict of interest and consults with the filer's supervisor as necessary, several remedies are available to avoid an actual or apparent violation of Federal ethics laws and regulations.⁴⁰

Political appointees subject to Senate confirmation are required to complete a financial disclosure form within five days of their nomination being transmitted by the President to the Senate and update the report as necessary prior to their first confirmation hearing.⁴¹ In practice, potential nominees work with White House and the Department's Ethics Office to begin preparing their financial disclosure forms and undergo screening for conflicts of interest before their nomination is announced.⁴² These officials must also execute a formal ethics agreement that

³⁹ See U.S. Office of Government Ethics, 5 U.S.C. app. 4 §§ 101-111: Public financial disclosure requirements, <http://www.oge.gov/Laws-and-Regulations/Statutes/5-U-S-C--app--4-%C2%A7%C2%A7-101-111---Public-financial-disclosure-requirements/>.

⁴⁰ See U.S. Office of Government Ethics, Public Financial Disclosure, <http://oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Public-Financial-Disclosure/>.

⁴¹ 5 U.S.C. app. § 101(b).

⁴² February 11, 2014 interview with Melinda Loftin (Committee staff notes).

identifies any conflicts and explains how they will be recused from particular matters or will dispose of any assets or resolve any arrangements to address the conflict.⁴³ These officials also must provide documentation confirming they have complied with their ethics agreement and remedied any conflicts.

Political appointees who are not subject to Senate confirmation and other senior officials generally are required to submit public financial disclosure forms within 30 days after they begin their service or, if already a government employee, after serving 60 days in a position subject to the public reporting requirement.⁴⁴ The Ethics Office also provides counseling to new political appointees and officials to help them complete their reports and to identify potential conflicts.⁴⁵

An official required to submit a public financial disclosure report generally must identify any assets or income, financial transactions, gifts, liabilities, agreements or arrangements, outside sources of income, and positions held outside the government for themselves, their spouse, or dependent children.⁴⁶ The official, also referred to as a “filer,” signs a certification that the report is “true, complete and correct” to the best of their knowledge. The form also includes a box for an ethics official to sign, indicating they have reviewed the report and concluded it is in compliance with applicable laws. The review and certification by the ethics official generally must occur within 60 days of receipt of the financial disclosure report.⁴⁷ However, if the reviewing ethics official identifies a potential conflict or determines remedial action should be taken, the filer is provided notice and given an opportunity to remedy the problem through a variety of methods, including divestiture, resignation, repayment, establishment of a blind trust, waiver, recusal, transfer, or reassignment.⁴⁸

Investigation Finds Delays and Inconsistent Reporting

As part of its March 2013 document request, the Committee sought copies of all financial disclosure forms, ethics agreements, and recusals for senior political appointees at the Department, including for the Secretary, Deputy Secretary, Chief of Staff, Counselor, Assistant Secretaries, as well as the heads of individual bureaus and agencies, deputies, chiefs of staff, and senior advisors (and people who have acted) to such positions. Committee Majority staff estimates the Department has 17 political appointee positions subject to Senate confirmation and approximately 80 other senior positions that were covered by the request.

⁴³ See 5 U.S.C. app. 4 § 110; 5 C.F.R. §§ 2634.801-2634.805.

⁴⁴ 5 U.S.C. app. 4 § 101(a); 5 C.F.R. § 2634.201.

⁴⁵ May 9, 2014 interview with Steve Black (Committee staff notes); May 22 interview with Neil Kornze (Committee staff notes).

⁴⁶ See 5 C.F.R. Part 2634, Subpart C.

⁴⁷ 5 C.F.R. § 2634.605.

⁴⁸ *Id.*

Even though Form 278 filings are publicly available, it took the Department more than six weeks before it provided copies for the Senate confirmed political appointees and an additional three weeks before providing copies for the other officials. In all, the Department provided copies of 412 financial disclosure forms for 146 officials who served in senior political appointee positions between January 2009 and March 2013 that were covered by the request.

However, an analysis by Committee Majority oversight staff has identified a number of positions and officials covered by the request for which financial disclosure forms are missing or have not been provided.

For example, after the Deepwater Horizon explosion in 2010, Michael Bromwich joined the Department to oversee the management and reorganization of the former Minerals Management Service.⁴⁹ Mr. Bromwich had previously served as the Inspector General for the Department of Justice but joined DOI from private law practice with the firm Fried, Frank, Harris, Shriver & Jacobson LLP. The Department has provided a copy of Mr. Bromwich's annual financial disclosure report for calendar year 2010, which he filed on August 8, 2011, and a copy of his termination report, which he filed on January 20, 2012. However, the Department has not provided a copy of any financial disclosure form Mr. Bromwich would have filed when he joined the Department as a "new entrant," which would have been used to screen for potential conflicts.

In another example, the Committee has not been provided copies of any financial disclosure reports for Principal Deputy Assistant Secretary for Indian Affairs Lawrence Roberts. Mr. Roberts previously worked in private practice as an attorney and registered lobbyist with Patton Boggs LLP, representing Indian tribes and the Office of Hawaiian Affairs before the Department and Congress as recently as 2008.⁵⁰ Mr. Roberts joined the Department's National Indian Gaming Commission as General Counsel in July 2010, before being selected as Deputy Assistant Secretary for Indian Affairs in September 2012, a position covered by the request for documents.⁵¹ He became Principal Deputy Assistant Secretary in July 2013.

⁴⁹ See U.S. Bureau of Safety and Environmental Enforcement, *Secretary Salazar Names Michael R. Bromwich and Tommy P. Beaudreau to Lead New DOI Bureaus*, Sept. 16, 2011, available at <http://www.bsee.gov/BSEE-Newsroom/Press-Releases/2011/Secretary-Salazar-Names-Michael-R--Bromwich-and-Tommy-P--Beaudreau-to-Lead-New-DOI-Bureaus/>.

⁵⁰ See Patton Boggs LLP, 2008 Lobbying Report for Tohono O'odham Nation, available at <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=7e197c26-aba9-47af-bdb1-c572c0b713ad&filingTypeID=73>; Patton Boggs LLP, 2008 Lobbying Report for Office of Hawaiian Affairs, available at <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=6b141d9d-8ec8-4220-a855-5bed768a0c64&filingTypeID=73>.

⁵¹ U.S. Department of the Interior: Indian Affairs, *Biographical Statement of Lawrence S. Roberts Principal Deputy Assistant Secretary – Indian Affairs U.S. Department of the Interior*, January 2013, available at <http://www.bia.gov/cs/groups/public/documents/text/idc1-024598.pdf>.

Although the Department has provided a copy of the calendar year 2010 financial disclosure report for Kira Finkler, which was filed on June 15, 2011, it has not provided a copy of a new entrant report or one for calendar year 2009, even though she was appointed Deputy Commissioner of the Bureau of Reclamation in September 2009.⁵² Ms. Finkler, who earlier in her career served as Senior Policy Advisor and Government Affairs Director for Trout Unlimited, joined the Department from the staff of the Senate Committee on Energy and Natural Resources.

The Department has claimed to have completed its response to the Committee's document request. It is unclear if the Department has copies of these financial disclosure forms and, if so, why they have not been provided, or if these forms were not submitted or retained. The Department has not responded to requests for clarification.

Delays in Reviewing Financial Disclosure Reports

When OGE issued its evaluation report for the Department's Ethics Office in May 2005, it expressed concern with the length of time taken by the Department to review and certify financial disclosure forms.

"It is vital that financial disclosure reports be reviewed and certified in a timely manner to ensure that potential conflicts of interest are promptly identified and remedied. Protracted review and certification can put employees at risk of running afoul of the ethics rules," OGE advised the Department.⁵³

Nearly 10 years later, the concerns raised by the OGE report remain. According to an analysis by Committee Majority oversight staff of the financial disclosure forms provided by the Department, the average time period it took for the Ethics Office to complete its review of a new entrant form submitted between January 2009 and March 2013 was 67.1 days. New entrant forms for Senate confirmed positions took on average only 1.5 days for the Ethics Office to complete its review.

However, out of the 412 total financial disclosure forms provided to the Committee, only 270 were reviewed and certified by the Ethics Office within 60 days. It took the Ethics Office 441 days to complete its review and certify one new entrant form that had been submitted on October 25, 2011, and 490 days for a new entrant form submitted on July 8, 2011.

⁵² U.S. Bureau of Reclamation, *Kira Finkler Named Reclamation's Deputy Commissioner for External and Intergovernmental Affairs*, September 8, 2009, available at <http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=29823>.

⁵³ May 5, 2005 letter from Jack Covaleski, Deputy Director at Office of Government Ethics, to Shayla F. Simmons, Designated Agency Ethics Official for the Department of the Interior, at 1.

The lengthy delays were not always limited to review of new entrant forms. For example, it took the Ethics Office 307 days to complete its review of Ms. Finkler's calendar year 2009 report, which was filed on June 15, 2011 but not approved until April 17, 2012. The Ethics Office took 199 days to review and approve the calendar year 2011 report filed by Sylvia Baca, the then Deputy Assistant Secretary for Lands and Minerals, and 181 days for the 2011 report filed by Director of the U.S. Geological Survey Marcia McNutt.

Such significant delays in reviewing and certifying financial disclosure forms increases the possibility that conflicts are not being identified and resolved in a timely manner. Based on a review of publicly available reports, it appears the Department's OIG has not conducted a comprehensive review of the Department's ethics program in more than a decade. Reviews by the Office of Government Ethics specifically identified lengthy delays in reviewing and certifying financial disclosure reports as an important problem to address. The Majority staff's oversight has documented how these delays persist, especially for lower level political appointees.

Written Recusals Generally Not Required – and Apparently Not Issued

An ethics agreement is “any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest.”⁵⁴ Ethics agreements typically arise in the context of the confirmation process for presidential appointees where the advice and consent of the Senate is required. OGE regulations governing both recusals and ethics agreements do not automatically require written documentation of such agreements. Ethics agreements, which are usually developed by senior Presidential appointees working in conjunction with the appropriate DAEO during the advice and consent process, are typically reduced to writing only because such agreements are common and must be transmitted between multiple offices and provided to the appropriate Senate committee.⁵⁵ While the definition of an ethics agreement is broadly worded to include oral agreements, ethics agreements for advice and consent appointees “must be reduced to writing, in some form, so that [they] may be transmitted ‘with the report to the Office of Government Ethics.’”⁵⁶

Nominees who submit ethics agreements during the advice and consent process must submit evidence of compliance to their DAEO.⁵⁷ One method of documenting compliance is to submit a “recusal instrument listing and describing

⁵⁴ 5 C.F.R. § 2634.802(a).

⁵⁵ See 5 C.F.R. § 2634.605(c).

⁵⁶ March 28, 2001 Memorandum from Amy L. Comstock, Director Office of Government Ethics to Designated Agency Ethics Official (quoting 5 C.F.R. § 2634.803(a)(1)), available at <http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2131>.

⁵⁷ 5 C.F.R. § 2634.804. “The Ethics in Government Act expressly recognizes this by requiring individuals to provide written notice ‘of any action taken by the individual pursuant to that agreement.’ 5 U.S.C. app. § 110(a).” March 28, 2001 Memorandum from Amy L. Comstock, Director Office of Government Ethics to Designated Agency Ethics Official, at 5.

the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors)."⁵⁸

Written recusals for other appointees or officials are only required when a conflict of interest or question of impartiality is identified as part of the financial disclosure review or ethics counseling process and the reviewing ethics official determines that a written recusal be submitted, or when an employee is asked by an agency ethics official or supervisor to file a written recusal. Regardless of whether the recusal arises under the criminal conflict of interest statute, the statute's implementing regulations, or the impartiality regulations governing standards of conduct, there is no general requirement that recusals be reduced to writing.⁵⁹ Rather, disqualification is accomplished simply by not participating.⁶⁰

The permissive language in the regulation leaves it up to the employee to disclose and document his or her own conflict. Instead of requiring the employee to provide documentation of the recusal or notify other employees who may be affected by the recusal, the regulations merely suggest that an employee "should" or "may" undertake such action – effectively allowing those with conflicts of interest or questions of impartiality to determine their own desired level of outside accountability and transparency.⁶¹

Several Examples Where Documentation for Recusals is Lacking

As discussed already in this report, the Committee has sought copies of any formal ethics agreements, recusals, or other documentation indicating that a senior Department official has disqualified him or herself from working on a particular matter due to a real or perceived conflict of interest or question about the official's impartiality. Out of the 100 or so DOI political appointee positions covered by the Committee's request, the Department originally provided copies of formal ethics agreements for 17 Senate confirmed political appointees and recusals for 12 senior political appointees. The Committee's oversight has identified several examples of where recusal documents may exist but have not been provided:

Neil Kornze's Recusal

In an interview with Committee oversight staff, current BLM Director Kornze said he discussed potential conflicts with the Ethics Office when he left the staff of Senate Majority Leader Harry Reid to join the Department as a Senior Advisor to

⁵⁸ 5 C.F.R. § 2634.804(b)(1).

⁵⁹ Jack Maskell, Cong. Research Serv., R 43365, Financial Assets and Conflict of Interest Regulation in the Executive Branch, at 6 (2014).

⁶⁰ 5 C.F.R. § 2635.402(c); 5 C.F.R. § 2635.502(e).

⁶¹ 5 C.F.R. § 2635.502(2). *See also*, 5 C.F.R. § 2635.402(c)(2).

BLM Director Abbey in January 2011. Mr. Kornze said in the eight years he worked for Senator Reid he had handled natural resource, energy, and environment issues affecting just Nevada, as well as matters of national policy, and that he interacted with the Department up to the Secretary level on myriad matters, including specific renewable energy projects.

Mr. Kornze said he discussed with the Ethics Office whether his prior work as the Senator's natural resources advisor raised any ethics concerns, and he said he was told that working for another branch of government was largely transferable and did not create a need to recuse himself from any particular matters he may have also worked on as a congressional staffer. Mr. Black provided a similar account of the advice he received from the Ethics Office when he joined the Department after serving as an advisor to then Senator Salazar.⁶² Mr. Kornze said he did discuss with the Ethics Office his family's history with gold mining companies in Nevada, as well as a relative's work for an environmental group. He said the Ethics Office was "comfortable" with these connections and did not direct him to recuse himself, but together they agreed that such matters voluntarily would go around Mr. Kornze to others in BLM. Mr. Kornze said he prepared a list of the entities with which his family was connected and provided a copy to the BLM Chief of Staff.

The Department did not provide a copy of this list when it provided copies of recusals for other senior political appointees in May 2014. Although Committee staff specifically requested this list the same day as Mr. Kornze's interview, the Department initially denied it was responsive before providing a copy on July 3, 2014. This undated document lists eight mining companies, as well as the name of an in-law and his place of employment. The Department also provided a formal "screening" memorandum Mr. Kornze issued on April 12, 2013 after he became Principal Deputy Director of BLM that lists seven mining companies from which he recused himself.

The two recusal documents contain a number of unexplained differences, including the fact that only five of the mining companies are listed on both. It is unclear why three companies on the informal January 2011 list do not appear on the April 2013 memorandum, or why that memorandum includes two companies that do not appear on the informal list. The January 2011 list also references David Bobzein of the Conservation Law Foundation, whereas the April 2013 memorandum does not. On September 24, 2013, the Conservation Lands Foundation and a number of other environmental groups wrote to Mr. Kornze requesting inclusion of California desert lands as part of BLM's National Conservation Lands system.⁶³

⁶² May 9, 2014 interview with Steve Black (Committee staff notes).

⁶³ September 24, 2013 letter from Conservation Lands Foundation, *et al.*, to Neil Kornze, copy to Carl Rountree and James Kenna, available at <http://conservationlands.org/wp-content/uploads/2013/09/California-Desert.pdf>.

In comparison, Mr. Kornze prepared a formal ethics agreement dated November 13, 2013 that stated upon his confirmation as Director of BLM he would not participate in any particular matter that would have a direct and predictable effect on his financial interest or those of any person whose interest would be imputed to him. The agreement identifies his spouse's place of employment but does not identify any other specific person or firm, including the ones listed on the January 2011 list and the April 2013 screening memorandum, which would warrant his recusal. A review of Mr. Kornze's financial disclosure forms also shows he reported his spouse's various places of employment as sources of outside income.⁶⁴ It is unclear why the mining companies connected to his parents' work would appear on the January 2011 list, prepared when Mr. Kornze joined the Department as a Senior Advisor, and on the April 2013 "screening" memorandum, when he became Principal Deputy Director of BLM but no longer be included on his Ethics Agreement when he became BLM Director.

From Law Firms to Regulators

The irregularities and inconsistencies in Mr. Kornze's recusal documentation are not the only ones identified by Committee Majority oversight staff. The Department previously provided copies of recusals for only 12 senior political appointees (not including Mr. Kornze), in addition to the formal ethics agreements and recusals for 17 Senate confirmed officials. In reviewing the financial disclosures provided for the Department, Committee staff has identified a number of other officials whose previous employment or financial interests may have raised a conflict of interest or question of impartiality that would have warranted their recusal. However, the Department has not provided documentation indicating such officials did disqualify themselves or, if recused, that their disqualifications were ever memorialized in writing.

For example, Committee staff has identified several officials who joined the Department from private practice with law firms and who may have had conflicts or impartiality concerns due to their prior employment or work with specific clients. In addition to Mr. Bromwich, Tommy Beaudreau also joined the Department from the law firm Fried, Frank, Harris, Shriver & Jacobson. After stints as Director of the new Bureau of Ocean Energy Management and as Acting Assistant Secretary for Land and Minerals, Mr. Beaudreau now serves as Chief of Staff to Secretary Jewell. Another senior official who assisted Mr. Bromwich and Mr. Beaudreau with reforming the Department's offshore regulatory, permitting, and safety program

⁶⁴ Mr. Kornze's "new entrant" financial disclosure, filed on April 3, 2011, indicates that additional information was listed on the reverse side of the form's signature page, but that information was not included in what the Department provided. The BLM Deputy Ethics Official approved Mr. Kornze's financial disclosure form on August 4, 2011. The Department provided a second financial disclosure form for Mr. Kornze covering calendar year 2011, which Mr. Kornze filed January 28, 2013. The Ethics Office approved the form on January 30, 2013. The form does not indicate that Mr. Kornze received an extension on the deadline for filing the report or otherwise explain why the calendar year 2011 report was filed in 2013.

was Michael Farber, who had been a partner with the law firm Dechert LLP. Mr. Farber currently serves as a Senior Advisor in the Bureau of Safety and Environmental Enforcement.

However, the Department has not provided copies of any documents indicating if, or how, these officials screened for potential conflicts when they joined the Department and whether they recused themselves from matters involving their former law firms, clients, or other ventures or associations upon joining the Department.

From Environmental Advocates to Policy Makers

Other officials joined the Department from non-governmental advocacy groups, including Michael Bean, who left the group Environmental Defense Fund, where he had worked since 1977, to serve as Counselor to the Assistant Secretary for Fish and Wildlife.⁶⁵ Another notable addition to the Department's political ranks was Rebecca Wodder, who had served as President of the group American Rivers.

Although Ms. Wodder was originally nominated to serve as Assistant Secretary for Fish, Wildlife, and Parks in June 2011,⁶⁶ she ended up working as a Senior Advisor to Secretary Salazar and was the architect of the Department's National Blueways System initiative.⁶⁷ Her nomination was withdrawn in January 2012, but she remained at the Department until resigning in 2013. Secretary Jewell announced a halt to the Blueways program at a Committee hearing on July 17, 2013 and issued a Secretarial Order on January 3, 2014 dissolving the Blueways program.⁶⁸

The Department has not provided copies of any documents indicating if, or how, these two officials screened for potential conflicts or recused themselves from matters involving their former employers, clients, or other groups with which they had an association upon joining the Department.

⁶⁵ U.S. Department of the Interior, *Assistant Secretary of the Interior Tom Strickland Announces Appointment of Renowned Wildlife Law Expert Michael Bean as Counselor*, June 11, 2009, available at http://www.doi.gov/news/pressreleases/2009_06_11_releaseA.cfm?renderforprint=1&.

⁶⁶ U.S. Department of the Interior, *Salazar Praises President's Nomination of Rebecca R. Wodder for Assistant Secretary for Fish, Wildlife and Parks*, June 8, 2011, available at <http://www.doi.gov/news/pressreleases/Salazar-Praises-Presidents-Nomination-of-Rebecca-R-Wodder-for-Assistant-Secretary-for-Fish-Wildlife-and-Parks.cfm>.

⁶⁷ U.S. Department of the Interior, Secretarial Order 3321, May 24, 2012. The Committee also requested documents related to Ms. Wodder's recusal, among other topics, from matters involving American Rivers as part of its oversight of the Blueways program in 2013. The Department did not provide any documents related to Ms. Wodder's recusal from American Rivers, or her communications and travel related to her work on the Blueways program, and to date has not complied with the Committee's request for documents on this matter.

⁶⁸ U.S. Department of the Interior, Secretarial Order 3331, January 3, 2014.

Former BP Official's Recusal and the Gulf Oil Spill

The Department also provided copies of several financial disclosure forms for Sylvia Baca, who left British Petroleum ("BP") to join the Department as Deputy Assistant Secretary for Land and Minerals Management in 2009.⁶⁹ Ms. Baca had previously worked as the Assistant Secretary for Land and Minerals Management from 1995 to 2001. Ms. Baca filed her "new entrant" financial disclosure form on October 21, 2009, and the Ethics Office approved it a week later. The form lists more than \$800,000 in total compensation from BP in 2008 and 2009, as well as several rental properties and investments.

On April 20, 2010, the Deepwater Horizon offshore oil and gas drilling rig exploded in the Gulf of Mexico.⁷⁰ In the annual financial disclosure report Ms. Baca filed with the Department three weeks later on May 5, 2010, there is a handwritten note indicating that she was "subject to recusal on file for BP matters."

Sylvia Baca's Financial Disclosure			
Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT			
Date of Appointment, Continuation, Election or Nomination (Month, Day, Year)		Termination Date (If Applicable) (Month, Day, Year)	
07/01/09			
Reporting Status (Check appropriate box)		Termination (Check appropriate box)	
<input checked="" type="checkbox"/> Incumbent		<input type="checkbox"/> New Entrant, Nominee, or Candidate	
Reporting Individual's Name		First Name and Middle Initial	
BACA		Sylvia V.	
Position for Which Filing		Department or Agency (If Applicable)	
Deputy Assistant Secretary, Land & Minerals Management		U.S. Department of the Interior	
Location of Present Office (or forwarding address)		Telephone No. (Include Area Code)	
1849 C Street, NW, Washington, DC 20240		(202) 208-6784	
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Title of Position(s) and Date(s) Held	
Do You Intend to Create a Qualified Diversified Trust?		Do You Intend to Create a Qualified Diversified Trust?	
<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No	
Signature of Reporting Individual		Date (Month, Day, Year)	
<i>Sylvia V. Baca</i>		5-5-2010	
Signature of Other Reviewer		Date (Month, Day, Year)	
Signature of Designated Agency Ethics Official/Reviewing Official		Date (Month, Day, Year)	
<i>Nia Barnes</i>		6/1/10	
Signature		Date (Month, Day, Year)	
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)			
(Check box if filing extension granted & indicate number of days) <input type="checkbox"/>			
Supervisor's Certification. I have reviewed the interest reported on this form in light of the duties required by the reporting individual's position. I am satisfied that there is no conflict of interest or potential for conflict of interest. If remedial action is required or additional explanation is necessary, use reverse side.			
Supervisor's signature: <i>William T. Lewis</i>			
12-May-2010			
Subject to recusal on file for BP matters			
(Check box if comments are continued on the reverse side) <input type="checkbox"/>			
Supersedes Prior Editions, Which Cannot Be Used.			
Form Designated in Microsoft Excel 2000			
NSN 7540-01-070-8444			

The Department has provided a copy of an email sent weeks later requesting that Ms. Baca be removed from a contact list of Department officials working on the Deepwater response. In the email, Deputy Assistant Secretary Ned Farquhar writes,

⁶⁹ U.S. Department of the Interior, *Secretary Salazar Names Sylvia V. Baca Deputy Assistant Secretary for Land and Minerals Management*, June 18, 2009, available at http://www.doi.gov/news/pressreleases/2009_06_18_releaseB.cfm.

⁷⁰ See David Barstow, *Deepwater Horizon's Final Hours*, NY Times, Dec. 25, 2010, available at <http://www.nytimes.com/2010/12/26/us/26spill.html?pagewanted=all&r=0>.

“Sylvia Baca is listed on the card and is in fact fully recused from participation in anything on Deepwater Horizon, and the appearance from the card is that she is involved. By copy of this note I am asking Walter [Cruickshank] to make sure that the MMS staff is all aware that Sylvia should not be involved in any capacity.”⁷¹

To be clear, the Department has not provided any written document issued from Ms. Baca indicating she had recused herself from BP matters generally or the Deepwater Horizon response specifically. Ms. Baca’s October 2009 financial disclosure form cites her past employment with BP but does not indicate she was recused from BP issues. Her May 5, 2010 financial disclosure form references that a written recusal was issued and was on file with the Assistant Secretary for Land and Minerals Management, Wilma Lewis, but such a document has not been produced to the Committee. In addition, it is unclear why Mr. Farquhar would need to remind staff with the Minerals Management Service, which is under the direction of the Assistant Secretary, about Ms. Baca’s recusal if it were already widely known. News accounts from the time of the spill noted Ms. Baca’s recusal,⁷² but the limited documentation provided does not shed light on when she issued her recusal, if she was directed to do so or did so voluntarily, how it was communicated and implemented, or whether it was in effect prior to the Deepwater accident.

* * *

The Committee’s oversight suggests the Department’s response, particularly regarding recusals, may be incomplete. It remains unclear if additional written recusals have been issued and, if so, why they were not provided to the Committee when first requested. A follow-up request was sent to the Department on August 5, 2014 seeking clarification to these questions, as well as copies of any additional financial disclosure forms and recusals submitted since the original March 2013 request. The Department has not yet responded as of the date of this report.

It is also possible that officials did in fact properly screen for conflicts and disqualify themselves from matters that raised a conflict or a question of their impartiality but they did not memorialize their recusals in writing. If true that political appointees did take steps to disqualify themselves, the lack of documentation may be allowed under ethics laws but may nonetheless create uncertainty over how such recusals were communicated and implemented.

Department ethics officials told Committee staff that it is the responsibility of individual employees to disqualify themselves as necessary and while written recusals generally are not required, the Ethics Office advises that as a best practice recusals should be reduced to writing and communicated to the appropriate

⁷¹ May 25, 2010 email at 9:30 AM from Ned Farquhar to Patricia Cosimi, copy to Wilma Lewis, Liz Birnbaum, Walter Cruickshank, and Mary Katherine Ishee, subject: Sylvia Baca recusal.

⁷² Ian Urbina, *Conflict of Interest Worries Raised in Spill Tests*, NY Times, May 21, 2010, available at http://www.nytimes.com/2010/05/21/science/earth/21conflict.html?_r=0; Kate Sheppard, *Fox in the Hen House: BP Exec at MMS*, Mother Jones, May 24, 2010, available at <http://www.motherjones.com/blue-marble/2010/05/bp-mms-revolving-door>.

individuals inside and outside the Department. Officials told Committee staff that the Department is operating consistent with OGE requirements and guidance and that to date OGE does not require written recusals. They also said the Department lacks a systematic way of tracking recusals or informing staff about employee conflicts or disqualifications, admitting that staff across the Department would not know if a colleague was recused unless the employee disclosed the conflict.

In sum, not even the Ethics Office knows which employees have recused themselves from which particular matters. This is especially troubling given the past ethics problems at the Department and recent efforts and statements by Department leadership purporting that a new era and culture of ethics have arrived. Ethics Officials said they are considering policy changes to address this but are concerned about violating employee privacy and the lack of direction from OGE.

Case Study 1: BLM Director Abbey's Recusals

One of the specific examples reviewed in depth by Committee Majority oversight staff involves interactions between the Ethics Office and former BLM Director Abbey in preparing his financial disclosure forms and implementing his recusals.

President Obama nominated Mr. Abbey on June 9, 2009 to serve as Director of BLM.⁷³ The Department has provided a copy of an ethics agreement submitted by Mr. Abbey to Ms. Loftin on June 11, 2011.⁷⁴ Mr. Abbey explained that upon confirmation and in accordance with 18 U.S.C. § 208 he would not participate personally or substantially in any particular matter which had a direct and predictable effect on his financial interests.

Mr. Abbey also pledged to withdraw from his consulting firm, Abbey, Stubbs, and Ford, LLC, which would change its name to remove any connection to him while he served as BLM director, and to not participate in any matter in which a former client is a party or represents a party for a period of one year. Mike Ford, a former BLM official, and Barry Stubbs were the two other partners in the firm.⁷⁵ Mr. Abbey indicated that he expected to rejoin the firm after leaving government service but until then would not participate in any particular matter that could affect the financial interests of the firm. The agreement also stated another consulting firm that Mr. Abbey co-owned with his wife, The A-Back Forty, LLC, had been dormant since January 2006 and would remain dormant during his time as BLM director and that he would also resign from several outside positions.

Also on June 11, 2009, Mr. Abbey submitted his new entrant financial disclosure form, which also discussed his involvement with Abbey, Stubbs, and Ford and The A-Back Forty consulting firms. The financial disclosure form listed 17 clients from which he had received compensation in excess of \$5,000, in addition to Abbey, Stubbs, and Ford, including BrightSource Energy, Inc., DesertXpress Enterprises, LLC, NV Energy, and the Southern Nevada Water Authority.

According to documents provided by the Department, Mr. Abbey received an ethics briefing from Deputy Ethics Official McDonnell on August 11, 2009 and was advised, among other things, about the Obama "ethics pledge" for political appointees and its two-year ban on participating in particular matters related to

⁷³ Office of the Press Secretary, *President Obama Announces More Key Administration Posts*, June 9, 2009, available at <http://www.whitehouse.gov/the-press-office/president-obama-announces-more-key-administration-posts-6-9-09>.

⁷⁴ June 11, 2009 Letter from Robert V. Abbey to Melinda J. Loftin, available at http://oge.gov/DisplayTemplates/201_Form/FilerDetail.aspx?id=6442451025.

⁷⁵ See Abbey, Stubbs & Ford, LLC, *Meet the Partners*, <http://abbeystubbsfordllc.com/partners.htm>.

former clients or represented parties.⁷⁶ The briefing ended with a recommendation to contact the Ethics Office “early/often” and that, while not privileged or confidential, advice received from the Ethics Office would provide a regulatory “safe harbor” upon which he could rely and take action.⁷⁷

In the weeks that followed, Mr. McDonnell provided Mr. Abbey a draft of a recusal memorandum to consider, as well as forms for Mr. Abbey to fill out listing the former clients and individuals and organizations with which he had a covered relationship.⁷⁸ Mr. McDonnell advised that the recusal memorandum would need to document steps Mr. Abbey had taken to comply with his ethics agreements and would be used to identify remaining conflicts.⁷⁹ “[I]n order to actually screen matters so that you can avoid conflicts, your staff will need lists of the individuals/organizations subject to restrictions in the ethics agreement,” Mr. McDonnell wrote in an email to Mr. Abbey.⁸⁰

Interactions with Former Business Associate

Mr. Abbey issued a formal recusal memorandum on October 26, 2009, almost three months after he was confirmed. The recusal confirmed that Mr. Abbey resigned his position with Abbey, Stubbs, and Ford on August 7, 2009 and the firm was renamed RobCyn LLC. The recusal also reiterated that Mr. Abbey “expected to rejoin the firm as a member” after his government service and that he would “not participate personally and substantially in any particular matter that had a direct and predictable effect on the financial interests of the firm.

In the days immediately before he issued his recusal, Mr. Abbey exchanged a number of emails with Mr. Ford, his former business partner, discussing both personal matters and official business.

In one email, Mr. Abbey writes to Mr. Ford, “Thanks for the heads up. I haven’t seen any formal invitation to this conf. ... We have scheduling meetings every week and I attend most. However, this event hasn’t come up so yes, there should be a concern. I don’t know what I might already be committed to on that day but I will find out Monday and do my best to be at John F’s conference.”⁸¹

Mr. Ford responded the same day that he had communicated to the event’s organizers that Mr. Abbey would check his schedule, writing, “I also told them your travel schedule has been tortured and you are working to get some additional help

⁷⁶ August 11, 2009 handwritten notes by Edward McDonnell.

⁷⁷ *Id.*

⁷⁸ August 31, 2009 email at 2:07 PM from Edward McDonnell to Robert Abbey, copy to Melinda Loftin and Kim Hintz, subject: Draft Recusal.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ October 24, 2009 email at 5:33 AM from Robert Abbey to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Nov 12 Conf.

in terms of scheduling events to avoid confusion and conflict in the future. They understand and they can adjust accordingly, up or down, as soon as you know what things look like when you return on Monday.”⁸²

Mr. Abbey continued to communicate and interact with his former business partner after he issued his recusal.⁸³ For example, Mr. Ford received an email from an official with the utility Edison International on May 17, 2010 asking that Mr. Ford reach out to Mr. Abbey on the official’s behalf to arrange an introduction between Mr. Abbey and a company executive who would be attending a Congressional hearing at which Mr. Abbey was scheduled to testify.⁸⁴ Mr. Ford forwarded the email to Mr. Abbey, writing, “Give me a call re the following later today or tonight when you have time.”⁸⁵ Mr. Abbey responded to say he would call later that day.⁸⁶

Also in 2010, Mr. Abbey was taking steps to promote increased ethics training for BLM employees, including an August 2010 memorandum to state directors.⁸⁷

The Department has provided several emails discussing Mr. Abbey’s participation at an event for the Nevada Pinyon-Juniper Partnership⁸⁸ being co-sponsored by the U.S. Department of Agriculture to discuss renewable energy development opportunities in Nevada. Mr. Ford was a moderator for one of the panels, and Mr. Abbey was scheduled to participate in a separate panel discussion, along with Mr. Kornze, who at that time was still on the staff of Senator Reid.⁸⁹

In one email exchange with the BLM Deputy Ethics Official, Mr. Abbey writes, “It is the same Mike Ford but the invitation to participate in this conference came

⁸² October 24, 2009 email at 10:11 PM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund] to Robert Abbey, subject: Re: Nov 12 Conf.

⁸³ See e.g. September 20, 2010 email at 9:10 PM from Robert Abbey to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Re: Fwd: “A Dream Come True!” The BLM agrees to Support Madeleine Pickens’s Wild Horse Eco-Sanctuary; September 24, 2010 email at 9:39 PM from Robert Abbey to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Re: Fwd: Eldorado Valley – (For your Monday Meeting with Sen. Bryan).

⁸⁴ May 17, 2010 email at 8:00 AM from Robert Stiens [Edison International email address] to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Bob Abbey.

⁸⁵ May 17, 2010 email at 9:31 AM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund] to Robert Abbey, subject: Fwd: Southern CA Edison.

⁸⁶ May 17, 2010 email at 2:30 PM from Robert Abbey to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Re: Fwd: Southern CA Edison.

⁸⁷ See Susan Montoya Bryan, *Updated: BLM Director Seeks Ethics Improvements*, Albuquerque Journal, August 27, 2010.

⁸⁸ See generally Nevada Pinyon-Juniper Partnership, *Pinyon Juniper Partnership*, <http://www.nvpipartnership.org/>.

⁸⁹ Nevada Pinyon-Juniper Partnership, Pinyon-Juniper Restoration and Utilization Summit Agenda, December 8 & 9, 2010, available at http://www.nvpipartnership.org/documents_pinyon/03%20PI%20Summit%20Agenda1221.pdf.

from the U.S. Dept. of Agriculture which we had received earlier. Mike's email to me was a friendly heads up that DOA had not received any response from the BLM regarding their invitation. Mike had also been invited to participate as a speaker at this conference representing The Conservation Fund,⁹⁰ an NGO."⁹¹ The BLM ethics official responded, "ok."⁹²

Two weeks later, a U.S. Department of Agriculture official emailed Mr. Ford to see about whether anyone from DOI or BLM would be participating at the event: "Mike Ford, I hate to pester Bob A, but I'm not hearing back from David Hayes, Assistant Secretary. [sic] I wonder whom Bob would suggest as being useful with the upper echelons of Interior so that someone else in DOI hears, sees, gets roped in to committing resources to this project?"⁹³ Mr. Ford forwarded the USDA email to Mr. Abbey later the same day, writing: "Robert, hope your return flight was uneventful. Great to catch up and visit directly. Looking forward to seeing you next month at the PJ Summit. ... If you get a chance, can you nudge David this weekend to see if he is available to attend? If not, does DOI want to send anyone else?"⁹⁴

Although Mr. Abbey had received an invitation directly from the organizers, one of the organizers also contacted Mr. Ford and asked if he "could take a few minutes and talk about this with Mr. Abbey" to ensure he is prepared to be an active participant in the panel discussion.⁹⁵ Mr. Ford forwarded the message to Mr. Abbey "[i]n case you did not receive this directly," adding, "I will be in attendance both days and will be your friendly escort upon arrival Wednesday night. Let me know if you need anything between now and then."⁹⁶

Mr. Abbey wrote back to Mr. Ford later that day with information about his travel plans: "I am scheduled to arrive in Las Vegas around 8:50 pm Wednesday night. I will provide you with the specifics later this week. **Do you have any**

⁹⁰ According to publicly available tax returns for The Conservation Fund, Mr. Ford is a consultant who serves as the group's Nevada and Southwest Director. He was paid \$453,550 in consulting fees between 2010 and 2012. Mr. Abbey's other business partner, Barry Stubbs, also serves as a consultant for The Conservation Fund. He was paid \$103,183 in 2012, according to the group's tax return, to work as a Real Estate Project Manager.

⁹¹ November 5, 2010 email at 5:36 PM from Robert Abbey to Markci Metcalf, subject: Re: Hey, Bob I was looking at the invitation...

⁹² November 8, 2010 email at 9:41 AM from Markci Metcalf to Robert Abbey, subject: Re: Hey, Bob I was looking at the invitation...

⁹³ November 18, 2010 email at 9:11 AM from Sarah Adler [USDA] to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], *et al.*, subject: FW: Please participate in two key PJ events.

⁹⁴ November 18, 2010 email at 1:41 PM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund] to Robert Abbey, subject: Fwd: PJ Summit.

⁹⁵ December 6, 2010 email at 10:32 AM from Doug Martin [Nevada Tahoe Conservation District] to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: FW: P/J Summit DRAFT Statement of Purpose and Implementation Plan.

⁹⁶ December 6, 2010 email at 6:14 PM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund] to Robert Abbey, subject: Fwd: FW: P/J Summit DRAFT Statement of Purpose and Implementation Plan.

suggestions on the type of message I should deliver on Thurs. I am prepared to state our support of all the goals of the partnership but do you have any recommendation as to something more specific that I should be prepared to commit BLM to?"⁹⁷

Although Mr. Abbey's participation in an event alongside one of his former business partners was apparently authorized by the BLM's Deputy Ethics Official, it appears that it was known inside and outside the Department that Mr. Abbey continued to remain in contact with Mr. Ford and that Mr. Ford served as a conduit to and advisor for Mr. Abbey, notwithstanding Mr. Abbey's recusal and ethics pledge. For example, in one email exchange obtained by the Committee, Mr. Ford is shown contacting Mr. Abbey with information about Desert Xpress, one of Mr. Abbey's former clients covered by his recusal: "As a follow up to our call this weekend I learned Senator Reid may be making an inquiry regarding timely action by the FWS as it relates to completion on the Biological Opinion. Certainly no BLM issues."⁹⁸ Mr. Abbey forwarded the email to a senior official in the U.S. Fish and Wildlife Service with a note: "See note below. This is a follow up to the question you asked me regarding Desert Express railroad that is proposed to be built in Southern CA and Clark County, NV. FYI."⁹⁹

The Committee has also obtained emails indicating that Mr. Abbey and Mr. Ford continued to communicate through unofficial channels, including an email account associated with Mr. Abbey's dormant consulting firm, The A-Back Forty. For example, on March 23, 2011, Mr. Ford sent an email to Mr. Abbey's BLM account asking him to "[c]heck aback40 for message."¹⁰⁰ Mr. Abbey responded, "Will do."¹⁰¹ The context of the email exchange is unclear.

In another exchange, Mr. Ford sent an email to Mr. Abbey's A-Back Forty email account requesting a meeting to discuss the possible expansion of a wildlife refuge in Nevada.¹⁰² Mr. Abbey sent the request to his assistant, asking, "See note

⁹⁷ December 6, 2010 email at 6:43 PM from Robert Abbey to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Re: Fwd: FW: P/J Summit DRAFT Statement of Purpose and Implementation Plan (emphasis added). A draft of Mr. Abbey's prepared remarks are available on the event's website at: [http://www.nvpipartnership.org/documents_pinyon/AbbeyP\[talkingpoints12082010draft.pdf](http://www.nvpipartnership.org/documents_pinyon/AbbeyP[talkingpoints12082010draft.pdf).

⁹⁸ February 15, 2011 email at 5:42 PM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund] to Robert Abbey, subject: DXE.

⁹⁹ February 15, 2011 email at 5:45 PM from Robert Abbey to Betsy Hildebrandt, subject: Fw: DXE.

¹⁰⁰ March 23, 2011 email at 4:15 PM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], to Robert Abbey, subject: Check aback40 for message.

¹⁰¹ March 23, 2011 email at 4:21 PM from Robert Abbey to Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], subject: Re: Check aback40 for message.

¹⁰² June 1, 2011 email at 1:18 PM from Mike Ford [using an email address associated with his work as a consultant for The Conservation Fund], to Bob Abbey, subject: Meeting with you in WDC on 6/23.

below. Please work directly with Mike Ford to schedule this meeting if possible.”¹⁰³ The assistant responded two days later, “I found it ... I did not recognize the email at first.”¹⁰⁴ In his ethics agreement and recusal, Mr. Abbey had represented that The A-Back Forty, LLC had no clients, had not engaged in any business since January 2006, and would remain dormant.¹⁰⁵ Furthermore, he had agreed “not to participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the consulting firm of The A-Back Forty, LLC.”¹⁰⁶

Unclear if BrightSource Recusal was Bright Line

As discussed above, Mr. Abbey had recused himself from matters involving BrightSource Energy, Inc., among other former clients. BrightSource is the developer of the Ivanpah Solar Electric Generating Station, located just across the Nevada state line in San Bernardino County, California. The project uses tens of thousands of mirrors to concentrate and focus solar energy on boilers atop three 459-foot towers that are used to generate up to 377 megawatts of electricity.¹⁰⁷ The project, which is located on about 3,500 acres of public land, required right-of-way approvals from the Department. BLM Deputy Director Mike Pool and Secretary Salazar formally approved the record of decisions for the right of ways on October 7, 2010.¹⁰⁸ Groundbreaking for the projects occurred on November 27, 2010 and was attended by Secretary Salazar and Governor Schwarzenegger.

¹⁰³ June 1, 2011 email at 5:03 PM from aback40 [email account] to Claudia Walker, subject: Fw: Meeting with you in WDC on 6/23.

¹⁰⁴ June 3, 2011 email at 5:14 PM from Claudia Walker to aback40 [email account], subject: Fw: Meeting with you in WDC on 6/23.

¹⁰⁵ June 11, 2009 Letter from Robert V. Abbey to Melinda J. Loftin, *available at* http://oge.gov/DisplayTemplates/201_Form/FilerDetail.aspx?id=6442451025.

¹⁰⁶ *Id.*

¹⁰⁷ Ivanpah Solar, *Ivanpah Project Facts*, <http://www.ivanpahsolar.com/about>.

¹⁰⁸ U.S. Bureau of Land Management, *Salazar Approves First Power Tower Solar Project*, October 7, 2010, available at: http://www.blm.gov/ca/st/en/info/newsroom/2010/october/DOI_1007.html.

Ivanpah Solar Groundbreaking Ceremony



The Committee has received several emails sent by Mr. Abbey in which he acknowledges his recusal or requests not to be included in a particular matter due to a conflict covered by a recusal. For example, Deputy Ethics Official McDonnell sent an email to Mr. Abbey in February 2010 inquiring about a BrightSource project on federal land and reminding him of his recusal.¹⁰⁹ Mr. Abbey responded, “I have not had any involvement with the BrightSource project. The deciding official is the BLM’s CA Desert District Manager and the BLM’s CA state director. I have not attempted to influence any decision related to this particular project. My primary involvement as the Director is to keep all of our renewable energy ‘fast track’ projects on schedule. But thanks for the reminder. I take my signed agreement seriously.”¹¹⁰

However, as he acknowledged in his email to Deputy Ethics Official McDonnell, Mr. Abbey continued to play a role in overseeing BLM’s work on “fast-track” solar energy projects. As discussed in more detail later in this report, Mr. Abbey served on the Renewable Energy Policy Group, which was composed of senior-level Department and State of California officials tasked with coordinating

¹⁰⁹ February 24, 2010 email at 8:48 AM from Edward McDonnell to Robert Abbey, copy to Melinda Loftin, subject: BrightSource.

¹¹⁰ February 24, 2010 email at 9:40 AM from Robert Abbey to Edward McDonnell, copy to Melinda Loftin, subject: Re: BrightSource.

and improving the permitting and environmental review processes for renewable energy projects in California.¹¹¹

REPG Meeting Discussing Ivanpah Project

From: Scott, Janea
Sent: Thursday, July 15, 2010 9:20 AM
To: Abbey, Robert V; Pool, Mike; Rogers, Constance; Amos, Adell; Farquhar, Ned; Bean, Michael
Cc: Black, Steve
Subject: The next REPG is coming up

Good morning,

I wanted to remind you that the next REPG meeting will be on Thursday July 22nd in Sacramento at the BLM office. Please let me know if you are planning to attend or planning to dial in at any point.

Here is a draft agenda (please note all times are pacific). We should have a final later this week.

Take care,
Janea

REPG Agenda Thursday July 22, 2010 BLM Office, Cottage Way

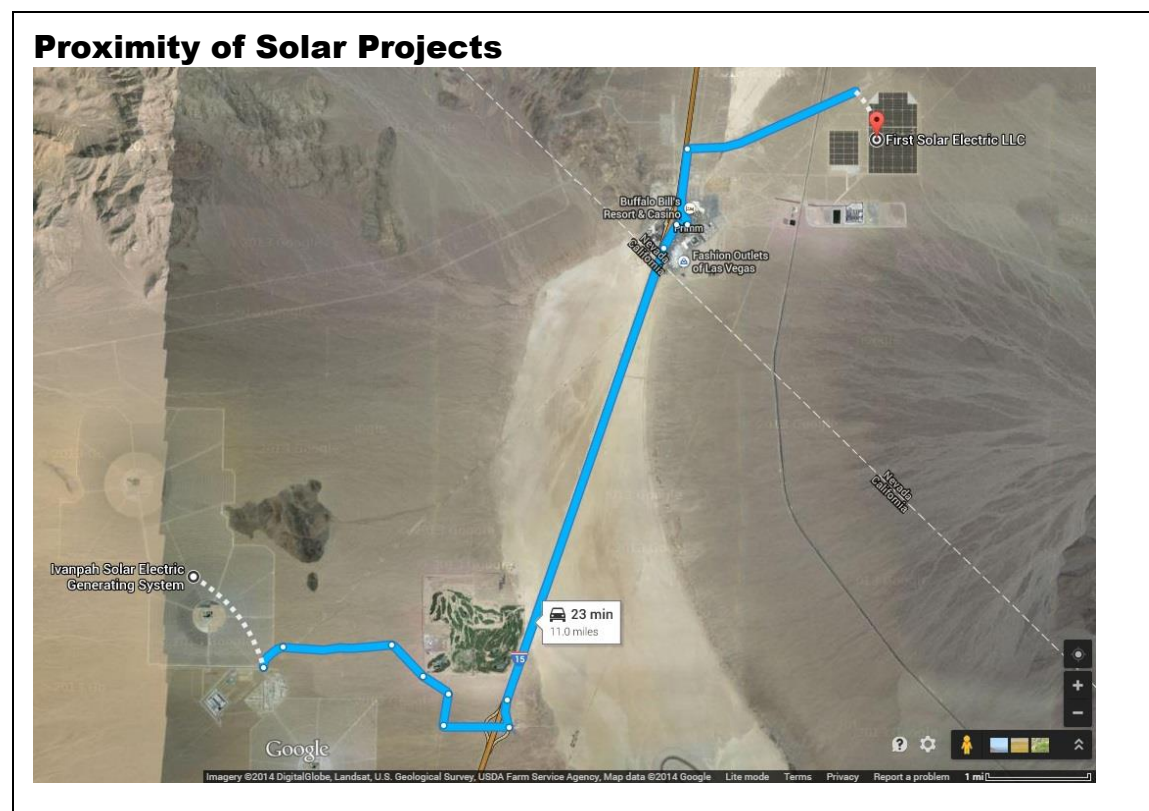
- .30 – 8:45: Introduction
8:45 – 9:15: Project Schedules
9:15 – 12:00: Project Updates
- Brightsource Ivanpah
 - Solar Millennium Palen and Blythe
 - Tessera/Stirling Imperial Valley and Calico
 - NextEra Genesis

Four days after this email, Mr. Abbey was copied on an email to several senior officials across the Department about a request from BrightSource for a separate meeting, to which Mr. Abbey responded that BrightSource was a former client of his “so I will need to recuse myself from this conversation. Mike Pool or someone else will need to represent the BLM at any meeting pertaining to this company.”¹¹²

¹¹¹ January 11, 2010 email at 11:08 AM from Janea Scott to Mike Pool, et al., copy to Steve Black and Robert Abbey, subject: Contact list for the Renewable Energy Policy Group.

¹¹² July 19, 2010 email at 5:48 PM from Robert Abbey to Ned Farquhar, copy to Gareth Rees, Janea Scott, Mike Pool, Steve Black, Tracie Lassiter, Wilma Lewis, subject: BrightSource request.

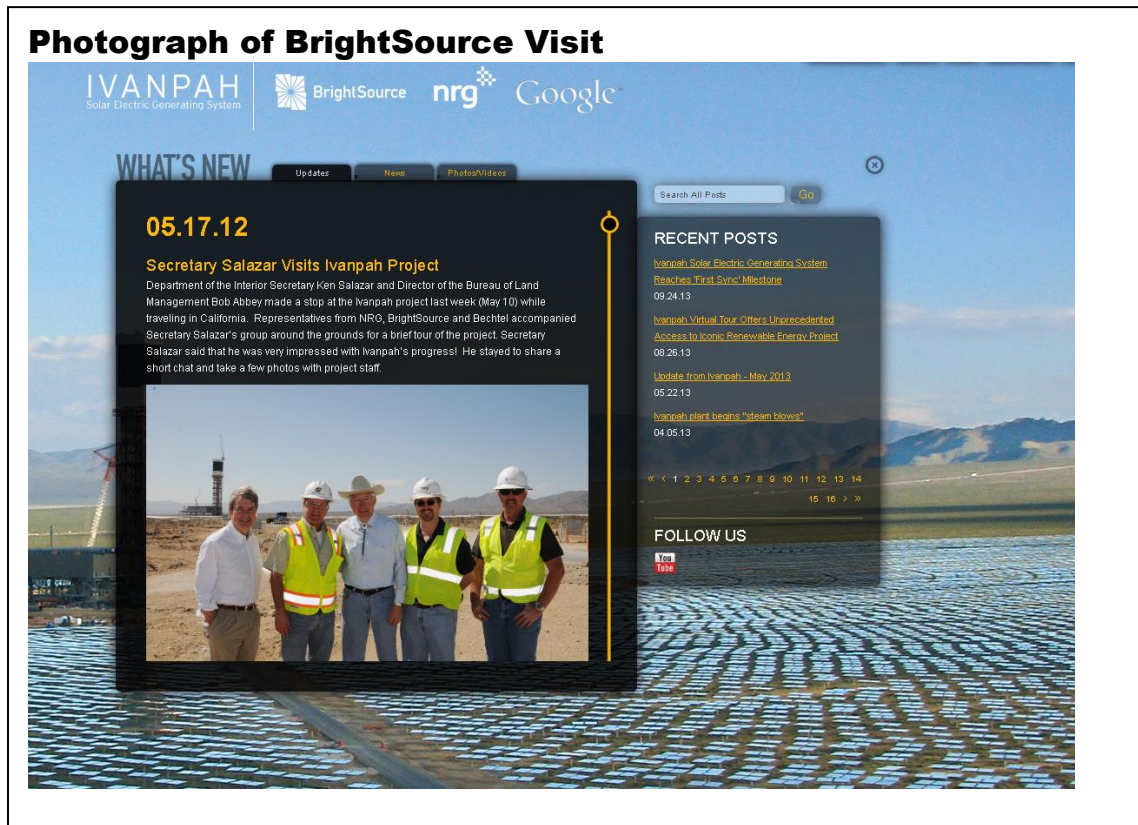
However, it appears based on documents provided by the Department that Mr. Abbey would have been invited to and may have participated in a number of REPG meetings discussing BrightSource's Ivanpah project among other specific projects being developed in California. Although Mr. Abbey was routinely copied on emails with agendas and briefing materials for these meetings, it is unclear the extent to which he disqualified himself from such meetings when BrightSource was being discussed or whether others in the Department or on the REPG knew of his conflict and recusal.



In his last month as BLM Director, Mr. Abbey accompanied Secretary Salazar on a trip to Nevada and Utah to visit several renewable energy project sites. According to travel records for Secretary Salazar, provided by the Department on July 3, 2014, it appears Mr. Abbey was part of the DOI delegation that arrived in Las Vegas the evening of Sunday, May 6, 2012. The next morning, on May 7, the group traveled about 40 miles west of Las Vegas along Interstate 15 to attend a ceremony at First Solar's Silver State North Solar Project, located near the California state line. According to their travel agenda, the group was to depart at 11 am local time from Silver State North and travel about 52 miles to a BLM fire station north of Las Vegas. The agenda does not indicate that a visit to BrightSource's Ivanpah facility, about 11 miles away along Interstate 15, was a planned part of the trip.

BrightSource has posted a photograph showing Secretary Salazar and BLM Director Abbey visiting the construction site for the Ivanpah project (apparently on

May 10, 2012, according to the caption for the photograph). A staff person with the Department's congressional affairs office said the Department was aware of the photograph on BrightSource's website but that the Department did not have any records indicating the Secretary visited the facility on May 7 and, for May 10, "Our records indicate that Secretary Salazar had a very busy schedule in Washington that day."¹¹³



¹¹³ May 9, 2014 email from Carlos Uriarte to Byron Brown, copy to Machalagh Carr, Sarah Neimeyer, and Reece Rushing, subject: Re: Travel Records.

If the Department is correct that Secretary Salazar and Mr. Abbey did not travel to the BrightSource Ivanpah project in May 2012, then it raises questions why the company would have sent a tweet on May 8, 2012 publicizing that Secretary Salazar had visited the site the day before.

BrightSource Tweeted about May 7 Visit



In an interview with Committee staff, current BLM Director Kornze said a lot of planning goes into a trip for the Secretary but that Secretary Salazar was a “pop-in kind of guy” and that “one of the things everyone loved about Salazar was his spontaneity.”¹¹⁴

Nevada Land Deal Prompts Inspector General Investigation

After Mr. Abbey left the Department in May 2012, he did in fact rejoin Mr. Ford and Mr. Stubbs as partners in a consulting firm. According to an account in the *Las Vegas Review-Journal*, questions were raised in 2013 about whether Mr. Abbey could share in approximately \$500,000 in consulting fees due to be paid to the firm for its role in negotiating the sale of 480 acres of BLM land in Henderson, Nevada, to a private developer for use as a sports complex. According to the newspaper and a later lawsuit filed by the City of Henderson to stop the deal, Mr. Abbey may have played a role in BLM’s decision to sell the land.¹¹⁵ In an August 2, 2011 email, Mr. Ford wrote, “I had a chance to visit informally with Bob Abbey (BLM Director) at the wedding this weekend. Bob will stand down until we are ready to introduce the request formally, on behalf of the [City of Henderson], but we can expect full support and cooperation at the local, regional, and national level.”

¹¹⁴ May 22, 2014 interview with Neil Kornze (Committee staff notes).

¹¹⁵ Alan Snel, *Ex-BLM chief named in land deal*, *Las Vegas Review-Journal*, February 15, 2013, available at <http://www.reviewjournal.com/news/crime-courts/ex-blm-chief-named-land-deal>

Email Discussing Bob Abbey Involving in Land Deal

On Aug 2, 2011, at 3:15 PM, <MikeFordTCF@aol.com> <MikeFordTCF@aol.com> wrote:

Thanks for working with Barry while I have been away in Colorado at Copper Mountain at my daughter's wedding. Home late last night tired, broke, but happy -- plus I have a new son-in-law that is a keeper.

Attached is a "draft" letter we will need Mark Calhoun to finalize as we formalize the request to BLM for the direct sale. I understand you want to wait until September 7, following formal acceptance and ratification of related agreements between IDM and COH. As such, we will want to set a meeting with the local BLM office immediately thereafter. In the meantime, I had a chance to visit informally with Bob Abbey (BLM Director) at the wedding this weekend. Bob will stand down until we are ready to introduce the request formally, on behalf of the COH, but we can expect full support and cooperation at the local, regional, and national level.

In a subsequent email, Mr. Ford discussed arranging meetings with the BLM state office and officials in Washington, D.C. to push for the sale.

Email Discussing Meetings with Officials in Washington, D.C.

From: mikefordtcf@aol.com
Sent: Sunday, August 07, 2011 12:59 PM
To: cmilam@idmcapital.com; cstephens@bhfs.com
Cc: ihaney@lasvegaspr.com; john@marchianolawcorp.com; Stephanie Garcia-Vaussa; Christine Guerol-Nyhus; barry@stubbs.com; jsnyder@idmcapital.com
Subject: Re: Draft Letter from the COH to BLM Regarding Land Sale Request

Chris:

Thanks for the suggested comments to the draft letter. I spoke with Stephanie on Thursday and she indicated the COH may have some comments as well so after we hear from Chris we will circulate the collective comments and work with everyone to finalize the letter as necessary and appropriate. In the meantime, I have having lunch with Mary Jo Rugwell (BLM Las Vegas District Manager) on Thursday and I intend to informally introduce the issue to her, on behalf of the COH, and let her know they will be advancing a "formal request" shortly after the first of the month. I will also let her know I have informally discussed things with appropriate folks in WDC and there is strong support to proceed with dispatch. I will also be in WDC the week of 8/21-26, so I will have an additional chance to visit with everyone at BLM and DOI. Let us know if you need anything in the interim.

Mike

While Mr. Abbey was BLM Director, the City of Henderson nominated the parcel of federal land for sale, and BLM agreed to put the land up for sale. In June 2012, the developer was informed that it was the only bidder. According to the newspaper, Mr. Abbey denied any wrong doing in arranging for the sale and said he would check with the Department about whether he could share in the fee.¹¹⁶

In November 2012, while the sale was still pending, the City Attorney for Henderson, Josh Reid contacted BLM's Nevada state director Amy Lueders to

¹¹⁶ *Id.*

request that BLM put a halt to the sale, arguing the developer had engaged in fraud in its negotiations with the City.¹¹⁷ Ms. Lueders forward the email from Mr. Reid to Mr. Kornze, who at that time was serving as BLM's Acting Deputy Director for Policy and Programs, and said, "Thx for the heads up last night. Received this this morning—will be following up."¹¹⁸

In his interview with Committee staff, Mr. Kornze said he had interacted with Mr. Ford over the years but did not recall what they discussed.¹¹⁹ When asked about the "heads-up" discussed in Ms. Lueders' email, Mr. Kornze said he did not remember.¹²⁰ Mr. Kornze said he was aware of discussions between BLM and the City but declined to answer whether anyone contacted him to request that BLM stop the Henderson land deal.¹²¹

On January 28, 2013, the City of Henderson filed a lawsuit against the developer and Mr. Ford, among others, alleging fraud.¹²² On April 5, 2013, Mr. Reid wrote to Ms. Lueders to say the City of Henderson had settled the litigation against the developer (although the claim against Mr. Ford had not yet been resolved) and the City no longer objected to the sale. However, on May 10, 2013, BLM formally cancelled the sale of the land to the City of Henderson, citing questions raised about the process used to nominate and sell this land, rather than through a competitive bidding process.¹²³

¹¹⁷ November 29, 2011 email from Josh Reid to Amy Lueders, subject: Urgent Matter for City of Henderson.

¹¹⁸ November 29, 2011 email from Amy Lueders to Neil Kornze, subject: Fw: Urgent Matter for City of Henderson.

¹¹⁹ May 22, 2014 interview with Neil Kornze (Committee staff notes).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *City of Henderson v. Milam*, case A-13-675741-B, Clark County, NV, District Court (2013).

¹²³ May 10, 2013 letter from Amy Lueders to Silver State Land LLC, subject: Re: Termination of Patent Issuance to Silver State Land, LLC, for the 480 acres Nominated for Sale by the City of Henderson, Nevada for Arena Development Project.

Case Study 2: Counselor to the Secretary Black's Recusal

Ethics was not the only part of the Department that Secretary Salazar set out to remake upon his arrival. Secretary Salazar also wanted the Department to prioritize development of renewable energy and transmission on federal lands.¹²⁴ To lead this effort, he brought on a long-time aide, Steve Black, to serve as Counselor to the Secretary. Mr. Black, a Berkeley trained lawyer, had served as Deputy Attorney General in Colorado under then Attorney General Salazar before joining Senator Salazar's Washington, D.C., staff as counsel handling natural resources and environmental issues.¹²⁵

On March 11, 2009, Secretary Salazar issued an order, prepared by Mr. Black,¹²⁶ establishing an energy and climate change task force and stating that "[e]ncouraging the production, development, and delivery of renewable energy is one of the Department's highest priorities"¹²⁷ through, among other things, "prioritizing the permitting and appropriate environmental review of transmission rights-of-way applications that are necessary to deliver renewable energy generation to consumers"¹²⁸ and "working with individual states, tribes, local governments, and other interested stakeholders, including renewable energy generators and transmission and distribution utilities, to identify appropriate areas for generation and transmission."¹²⁹ The order appointed Counselor to the Secretary Black as a co-chair of the task force, along with the Deputy Secretary. Building on that effort, Secretary Salazar issued another order on September 14, 2009, that established a council within the Department to address the impacts of climate change on landscapes and wildlife.¹³⁰ Mr. Black was appointed vice chair of this council as well.¹³¹

¹²⁴ See U.S. Department of the Interior, *Statement of Ken Salazar, Secretary of The Interior, before The Energy And Natural Resources On Energy Development On The Public Lands And Outer Continental Shelf*, March 17, 2009, available at http://www.doi.gov/news/speeches/2009_03_17_speech.cfm.

¹²⁵ A summary of Mr. Black's professional credentials can be found on the website of his current employers, Bingham McCutchen LLP. Bingham McCutchen, *Steve W. Black*, <http://www.bingham.com/People/Black-Steve>.

¹²⁶ See February 6, 2012 Memorandum from Steve Black to Melinda Loftin, copy to Art Gary, at 3.

¹²⁷ U.S. Department of the Interior, Secretarial Order No. 3285, March 11, 2009, at Sec. 4, available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageID=5759>.

Secretarial Order 3285 was amended in February 2010 to clarify that the task force reported to the Energy and Climate Change Council.

¹²⁸ U.S. Department of the Interior, Secretarial Order No. 3285, March 11, 2009, at Sec. 5(a)(4), available at

<http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageID=5759>.

¹²⁹ *Id.* at Sec. 5(a)(8).

¹³⁰ See U.S. Department of the Interior, *Salazar Launches DOI Climate Change Response Strategy*, Sept. 14, 2009, available at <http://www.doi.gov/news/pressreleases/Salazar-Launches-DOI-Climate-Change-Response-Strategy.cfm>.

¹³¹ *Id.*

In implementing these orders, the Department worked closely with the State of California, which on its own had already been pursuing state laws and policies to increase the share of renewable energy in its energy portfolio and to turn the Golden State into the epicenter of renewable energy development. One of the issues California pursued was increased coordination between state and federal agencies. For example, California's Department of Fish and Game and the California Energy Commission entered into an agreement¹³² with the U.S. Fish and Wildlife Service and Bureau of Land Management in November 2008 to establish a state and federal collaboration called the Renewable Energy Action Team ("REAT"), to facilitate permitting and environmental reviews. One of the outcomes from this collaboration was the Desert Renewable Energy Conservation Plan ("DRECP"), a joint effort to consider the impacts of large-scale renewable energy development on desert wildlife and ecosystems.¹³³

In July 2009, Secretary Salazar announced plans to "fast track" solar development on federal land, including the evaluation of specific tracts of land for development of large-scale solar projects.¹³⁴ On October 12, 2009, Secretary Salazar and California Governor Arnold Schwarzenegger signed an agreement to work cooperatively at the Department and State level in advancing these renewable energy goals.¹³⁵ As part of this effort, the Renewable Energy Policy Group ("REPG") was established, staffed by senior officials from both DOI and California. Representing the Secretary on the REPG was Mr. Black and his deputy, Janea Scott, as well as BLM Director Abbey. Michael Picker, a senior advisor to the governor for renewable energy policy, and Manal Yamout, a special advisor to the governor for renewable energy facilities, represented Governor Schwarzenegger on the REPG. The purpose of the REPG, which was to meet monthly through December 2010, followed by meetings every other month thereafter, was to identify and resolve problems with permitting at the state and federal level for renewable energy projects,¹³⁶ especially projects that stood to benefit under the American Recovery and Reinvestment Act of 2009.¹³⁷

¹³² California Energy Commission, *Memorandum of Understanding Between the California Department of Fish and Game, the California Energy Commission, The Bureau of Land Management, and the U.S. Fish and Wildlife Service Regarding the Establishment of the California Renewable Energy Action Team*, Nov. 17, 2008, available at

<http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/pa/energy.Par.76169.File.dat/RenewableEnergyMOU-CDFG-CEC-BLM-USFWS-Nov08.pdf>.

¹³³ Desert Renewable Energy Conservation Plan, *About DRECP: REAT*, <http://drecp.org/participants>.

¹³⁴ See U.S. Bureau of Land Management, *Secretary Salazar, Senator Reid Announce 'Fast-Track' Initiatives for Solar Energy Development on Western Lands*, June 29, 2009, available at: http://www.blm.gov/wo/st/en/info/newsroom/2009/june/NR_0629_2009.html.

¹³⁵ U.S. Department of the Interior, *Memorandum of Understanding Between the State of California and the Department of the Interior on Renewable Energy*, Oct. 12, 2009, available at <http://www.doi.gov/upload/CAMOUsigned.pdf>.

¹³⁶ *Id.*

¹³⁷ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

At one early REPG meeting, held January 21, 2010 at the California Energy Commission offices in Sacramento, representatives from the Department and California heard presentations from renewable energy companies, including NextEra, about individual projects being developed as well as discussed cross-cutting issues like development of a Programmatic Environmental Impact Statement ("PEIS") for solar projects and transmission issues.¹³⁸

Friendship Begins Over Renewable Energy Work

Although Mr. Black had not known Ms. Yamout prior to their work together on the REPG, a friendship developed over time.¹³⁹ Following the January 2010 meeting, Ms. Yamout sent a friendly email to Mr. Black and Ms. Scott thanking them for dinner after the January REPG meeting, adding, "I had a great time and it was great to get a chance to talk with the both of you outside of a giant conference room."¹⁴⁰ During the February 24, 2010 REPG meeting, which Mr. Black and Ms. Scott participated in via video conference, Ms. Yamout traded a series of personal emails:¹⁴¹ "Are you having fun yet," Ms. Yamout asked Mr. Black, who replied, "Hi there! I would rather be in CA. Hard to stay focused on a video conf [sic] call, although Janea is playing close attention. :-)." Ms. Yamout wrote back, "You are very lucky to have Janea ... we wish you guys were here too, at least we would have dinner to look forward to." Mr. Black wrote, "Strongly agree on both points! Hope you'll get out after to relax. Let's discuss March 23/24 off line." Ms. Yamout responded, "Yes, we should discuss March. Call whenever you get a chance."

In 2010, NextEra was one of the largest renewable energy companies in the world, with two solar facilities and 15 wind farms already operating in California.¹⁴² Secretary Salazar and Governor Schwarzenegger took a tour of NextEra's Harper Lake solar project in Hinkley, California, on March 22, 2010. They were joined by Counselor to the Secretary Black (picture below).

¹³⁸ California Energy Commission, *Notice of Meeting of the Renewable Energy Policy Group January 22, 2010*, available at http://www.energy.ca.gov/siting/2010-01-22_REPG_MEETING.PDF.

¹³⁹ May 9, 2014 telephone interview with Steve Black (Committee staff notes).

¹⁴⁰ January 22, 2010 email at 3:30 AM from Manal Yamout to Steve Black and Janea Scott, no subject.

¹⁴¹ See February 24, 2010 email thread ending at 7:49 PM from Manal Yamout to Steve Black, subject: Hello!

¹⁴² See U.S. Bureau of Land Management, *Secretary Salazar, Gov. Schwarzenegger Visit World's Largest Solar Plant, Laud Renewable Energy Technology, Development*, March 22, 2010, available at http://www.blm.gov/wo/st/en/info/newsroom/2010/march/NR_03_22_2010.html.

Tour of NextEra's Harper Lake project



Steve Black shown on far left

The day after the tour, Ms. Yamout sent an email to Mr. Black and Ms. Scott asking if they were on Facebook.¹⁴³ Mr. Black replied, "No - the whole idea makes me nervous! :-)"¹⁴⁴ Ms. Yamout then sent Mr. Black (dropping Ms. Scott from the exchange) a follow-up email saying, "I am going to give you a Facebook lesson. Right after you get a phone with a full keyboard."¹⁴⁵ Two days later, Ms. Yamout sent just Mr. Black another email, "Sorry I had to run - we'll have to finish our conversation another time"¹⁴⁶ to which Mr. Black replied, "Indeed. Hope you have fun in San Diego!"¹⁴⁷ Later that day, Ms. Yamout responded, "San Diego is great ... Thanks again for taking the time to come out - let me know when you are ready to go on the boat - I'll try to acquire some water skis for you if the water is warm enough. You can pretend like the Sacramento Delta is a snow covered mountain in Colorado."¹⁴⁸ The following week, Ms. Yamout sent several photos from the tour of NextEra's Harper

¹⁴³ March 23, 2010 email at 12:10 PM from Manal Yamout to Steve Black and Janea Scott, no subject.

¹⁴⁴ March 23, 2010 email at 10:12 AM from Steve Black to Manal Yamout and Janea Scott, no subject.

¹⁴⁵ March 23, 2010 email at 1:41 PM from Manal Yamout to Steve Black, no subject.

¹⁴⁶ March 25, 2010 email at 12:57 AM from Manal Yamout to Steve Black, no subject.

¹⁴⁷ March 25, 2010 email at 11:10 AM from Steve Black to Manal Yamout, no subject.

¹⁴⁸ March 25, 2010 email at 4:44 PM from Manal Yamout to Steve Black, no subject.

Lake project to Mr. Black, joking that he should not “post them on your yet-to-be created Facebook page.”¹⁴⁹

In the fall of 2010, the Department took action on a number of solar projects, including approving NextEra’s Genesis solar project, a 250 MW project on almost 2,000 acres of federal land near Blythe, California.¹⁵⁰

Around the same time, as the REPG continued its official meetings and discussions about renewable energy issues,¹⁵¹ the friendships among the participants continued to develop with dinners and emails on the side.¹⁵² In addition to the growing friendship between Mr. Black and Ms. Yamout, a friendship developed between Ms. Scott and Ms. Yamout as well, and the two traveled together on vacation in December 2010.¹⁵³

On December 17, 2010, the Bureau of Land Management released a draft of the PEIS for solar development in California and five other western states that

¹⁴⁹ March 29, 2010 email at 12:03 PM from Manal Yamout to Steve Black, subject: Photos from Last Week.

¹⁵⁰ See U.S. Department of the Interior, *Secretary Salazar Approves Seventh Large-Scale Solar Energy Project on U.S. Public Lands*, Nov. 4, 2010, available at <http://www.doi.gov/news/pressreleases/Secretary-Salazar-Approves-Seventh-Large-Scale-Solar-Energy-Project-on-US-Public-Lands.cfm>; see also U.S. Bureau of Land Management, *Genesis Solar Power Project (CACA 48880)*, July 3, 2012, available at http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Genesis_Ford_Dry_Lake.html.

¹⁵¹ See April 8, 2010 email at 1:27 PM from Manal Yamout to Steve Black, Michael Picker, and Janea Scott, copy to David Nawi, subject: Re: Issue: Federal concerns regarding condors could force a moratorium on new wind and transmission line development in the Tehachapi region.

¹⁵² See April 5, 2010 email at 9:36 PM from Manal Yamout to Steve Black, subject: Thank you!; May 27, 2010 email at 9:34 PM from Manal Yamout to Steve Black, no subject (“Hey Steve – Had the CNN oil spill coverage on today and thought of you. I can only imagine how crazy things are, just wanted to drop a quick note to let you know that we’re thinking of you guys. – Manal”); July 19, 2010 email at 2:59 PM from Manal Yamout to Janea Scott and Steve Black, no subject (“Steve and Janea – Not sure what your plans are for this weekend – but if you two are planning to stay in CA after the REPG meeting and want to go boating on Saturday let me know”); October 4, 2010 email at 3:44 PM from Steve Black to Manal Yamout and Janea Scott, subject: Re: Dinner; October 5, 2010 email at 2:49 PM from Manal Yamout to Steve Black, no subject (“Thanks for the nice words and sorry about the gov. He’ll try to call the Secretary when he lands. You guys did a nice job and he press turn out was great ... I think I now owe you at least one drink for the gov not calling in.”); November 17, 2010 email at 9:57 PM from Manal Yamout to Steve Black, no subject (“Sorry I didn’t get a chance to say goodbye. Good luck with the Golden Eagles and the girlfriend. See you in a couple of weeks.”); November 17, 2010 email at 11:02 PM from Steve Black to Manal Yamout, no subject (“Thanks. Sorry I missed you too. When will you be in DC? Have a nice holiday!”).

¹⁵³ December 14, 2010 email at 12:30 AM from Manal Yamout to Steve Black, subject: AP Enterprise: Eagle concerns stymie wind farms (“We miss you too, but are not fighting the good fight for at least another week or so... I think your day probably wins for productivity. We spent the day on horseback, zip lines and water slides and then lounged around a volcanic mud batch spa all afternoon. Hopefully you’ll have this whole golden eagle thing sorted by the time we’re back – tough article, but hopefully it will help move things”).

studied, among other options, the identification of Solar Energy Zones, areas of federal land with high solar potential and few impediments to development.¹⁵⁴

In 2011, the REPG's attention remained on advancing specific projects in the fast-track pipeline as well as looking for solutions to a number of unresolved issues for managing endangered species, protected birds, and landscape conservation that could hinder development of renewable energy. For example, the REPG discussed draft eagle take and wind energy guidelines being developed by the Fish and Wildlife Service, at its February 2011 meeting,¹⁵⁵ and at its May 2011 meeting, the REPG discussed those draft documents as well as development of the solar PEIS and the DRECP that would address threats to the endangered desert tortoise, condors, and other protected species from large-scale renewable energy development.¹⁵⁶

In April 2011, Mr. Black also took a tour of NextEra's Genesis project and the proposed McCoy project being developed in California.

According to information provided by NextEra, Ms. Yamout was recruited by David Markarian, who oversaw state government relations for the company, beginning as early as April 2011 to work as his deputy.¹⁵⁷ She would not work on California issues to avoid any conflict of interest but, given her experience with that state, she was expected to serve as a deputy to Mr. Markarian and help him advance the company's projects in other states.¹⁵⁸ According to NextEra, Ms. Yamout joined the company on or about July 28, 2011.¹⁵⁹ This is consistent with what the Department has stated.¹⁶⁰ After joining the company, Ms. Yamout then took several weeks of leave before starting work full time.¹⁶¹

On July 29, 2011, the U.S. Fish and Wildlife Service and the Bureau of Land Management published a notice in the Federal Register announcing the intent to prepare an environmental impact statement for the DRECP.¹⁶² The notice explained that, when finalized, the DRECP would allow incidental take permits to be issued

¹⁵⁴ Notice of Availability of the Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States and Notice of Public Meetings, 75 Fed. Reg. 78980 (Dec. 17, 2010).

¹⁵⁵ February 15, 2011 email at 10:25 PM from Manal Yamout to Alene Thomas, *et al.*, subject: Agenda for Friday's REPG Meeting.

¹⁵⁶ See attachment to May 17, 2011 email from Manal Yamout at 8:26 PM to Alene Thomas, *et al.*, subject: Agenda for this Friday's REPG Meeting.

¹⁵⁷ December 18, 2013 meeting with NextEra counsel, WilmerHale (Committee staff notes).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ July 3, 2013 letter from Sarah Neimeyer, Director, Office of Congressional and Legislative Affairs, U.S. Department of the Interior, to Doc Hastings, Chairman, Committee on Natural Resources.

¹⁶¹ December 18, 2013 meeting with NextEra counsel, WilmerHale (Committee staff notes); and May 9, 2014 interview with Steve Black (Committee staff notes).

¹⁶² Desert Renewable Energy Conservation Plan, Habitat Conservation Plan and Possible Land Use Plan Amendment, Southern California: Environmental Impact Statement, 76 Fed. Reg. 45606 (July 29, 2011).

under the Endangered Species Act to allow solar, wind, and other renewable energy projects to take covered species incidental to their otherwise lawfully permitted activities.¹⁶³

Friendship Develops Over Time Into Romantic Relationship

However, Ms. Yamout continued to have access to her California state email account after she had joined NextEra and continued to communicate with Mr. Black and others about the REPG and her vacation plans. On August 5, 2011, Ms. Yamout sent an email from her California state account announcing her departure and stating she would start her new job with NextEra on August 22, 2011.¹⁶⁴ Three hours later, Ms. Yamout sent an email from her same California state account to Ms. Scott, Mr. Black, and Mr. Picker about planning for the August REPG meeting. “Before I take off tomorrow, I wanted to make sure you had a few notes I took during the last REPG. Also, I sent the REPG group list to you and Michael yesterday. Let me know if you did not get it. Looking forward to see you the next time you are in Sac (if not sooner)!” Ms. Yamout wrote.¹⁶⁵ It is unclear why Ms. Yamout continued to send emails from her California state account after she had already started working for NextEra.

Mr. Black responded an hour later:

*Thanks Manal. And congratulations (again) on your new position! I know I speak for the entire REPG: we’re all going to miss you, your leadership and your great sense of humor. But we look forward to working with you again in your new capacity (after the ethics lawyers have cleared that). ... I look forward to seeing you both at Phantom Ranch on the 13th. Be safe, and do your best to arrive with the boats upright, the gear intact, and the beer on ice! See you soon.*¹⁶⁶

¹⁶³ *Id.* at 45608.

¹⁶⁴ August 5, 2011 email at 11:23 AM from Manal Yamout [at GOV.CA.GOV email address] to undisclosed list of recipients, subject: Goodbye & New Contact Information.

¹⁶⁵ August 5, 2011 email at 1:51 PM from Manal Yamout to Janea Scott, copy to Michael Picker and Steve Black, subject: REPG Follow-Up.

¹⁶⁶ August 5, 2011 email at 11:55 AM from Steve Black to Manal Yamout [at GOV.CA.GOV email address] and Janea Scott, copy to Michael Picker, subject: RE: REPG Follow-Up.

Email from Steve Black to Manal Yamout

From: Black, Steve [mailto:steve_black@ios.doi.gov]

Sent: Friday, August 05, 2011 11:55 AM

To: Manal Yamout; Scott, Janea

Cc: Michael Picker

Subject: RE: REPG Follow-Up

Thanks Manal, and congratulations (again) on your new position! I know I speak for the entire REPG: we're all going to miss you, your leadership and your great sense of humor. But we look forward to working with you again in your new capacity (after the ethics lawyers have cleared that). And in the meantime, I'm confident Janea (with occasional help from me and Michael) will continue to keep REPG and the REAT agencies doing what they do best. It has been a real privilege to be a part of your (Susan's, now Jerry's) team for two and a half years; thanks for all you have done to get us to this point and for making it so much fun.

A mundane logistics question and request: Nick will set up the video conference for the 25th, with assistance from BLM. Who is your IT point of contact for setting the call or webex up on your end? And will you please (or your designated replacement) send Nick a list of attendees (or the complete REPG list)? That would be very helpful.

I look forward to seeing you both at Phantom Ranch on the 13th. Be safe, and do your best to arrive with the boats upright, the gear intact, and the beer on ice! See you soon.

Steve

Ms. Yamout replied, "Thanks Steve! ... Looking forward to seeing you on the 13th! Working with you and Janea over the past couple of years has been a real highlight for me. Also, you should all know that you won't be able to get rid of me. I will find you for wine and dinner after every REPG!"¹⁶⁷

According to Mr. Black, his romantic relationship with Ms. Yamout began during the August rafting trip through the Grand Canyon.¹⁶⁸

Mr. Black received an email from Ms. Scott updating him on several things that happened while he was on vacation, including updates on the development of the Programmatic Environmental Impact Statement for solar projects, wind energy guidelines and rulemaking for eagles, and scheduling a meeting for when he returns at the request of an attorney for NextEra, Andy Spielman.¹⁶⁹ Ms. Scott ended the email by writing, "I hope you've been having a wonderful time out west! Manal reports that the Grand Canyon trip was absolutely amazing. I can't wait to hear more about it! ... Looking forward to catching up when we're both back!!"

¹⁶⁷ August 5, 2011 email at 3:02 PM from Manal Yamout [at GOV.CA.GOV email address] to Steve Black and Janea Scott, copy to Michael Picker, Troy Whitfield, and Becky Curler, subject: RE REPG Follow-Up.

¹⁶⁸ May 9, 2014 interview with Steve Black (Committee staff notes).

¹⁶⁹ August 25, 2011 email at 7:19 PM from Janea Scott to Steve Black, subject: PLS READ ME: Summary e-mail for week of August 22.

According to Mr. Black's interview with Committee staff and documents received by the Committee, Ms. Yamout informed her supervisor, Mr. Markarian, about the new relationship shortly after it began, in late August or early September. Mr. Black in turn informed Mr. Speilman, the attorney for NextEra, around the same time. Ms. Scott and Mr. Picker, of the California Governor's Office, were also told about the relationship shortly after it began. Mr. Black told Committee staff he did not feel the need to inform others at the Department about his relationship with Ms. Yamout, given its newness, but said at some point he would have informed his supervisor, Secretary Salazar, but he did not recall the specifics of when or how this was done.

Promoting NextEra Project to White House

Meanwhile, on August 31, 2011, President Obama issued a memorandum to the heads of Departments and Agencies on the subject of "Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review."

On September 13, 2011, Mr. Black sent the President's memorandum to Mr. Markarian and others at NextEra asking for information about the company's McCoy solar project.¹⁷⁰ "As discussed, we are inclined to identify the McCoy solar project in response to the President's August 30 infrastructure memo (copy attached). It seems to fit the criteria set forth in that memo best, among the various possibilities," Mr. Black wrote. "Finally, as I explained, this decision does not mean the Secretary or the Department places any less importance on the Sonoran Solar project. But given the progress already made (and expected in the next few months) on the permitting side, and the commercial uncertainty associated with that project, as we discussed yesterday, we think McCoy would be a better fit."

Mr. Markarian responded five minutes later, "Thanks, we're on it."¹⁷¹ The morning of September 14, 2011, a NextEra official wrote to Mr. Black to say they would send their response later that day, to which Mr. Black responded, "That will suffice for today, thanks (!). It was good to see you last night."¹⁷² Mr. Markarian was copied on the exchange. Later that day NextEra provided the requested information about the McCoy project.¹⁷³

On September 15, 2011, Mr. Black submitted a weekly report of his activities to Secretary Salazar, informing him that the Department was already working to

¹⁷⁰ September 13, 2011 email at 5:34 PM from Steve Black to David Markarian, et al., copy to Janea Scott, subject: RE: McCoy Solar.

¹⁷¹ September 13, 2011 email at 5:39 PM from David Markarian to Steve Black, *et al.*, copy to Janea Scott, subject: Re: McCoy Solar.

¹⁷² September 14, 2011 email at 10:51 AM from Steve Black to Matt Handel, David Markarian, et al., copy to Janea Scott, subject: RE: McCoy Solar.

¹⁷³ September 14, 2011 email at 4:42 PM from Brandon Stankiewicz [NextEra Project Director] to Steve Black and Janea Scott, copy to David Markarian, et al., subject: RE: McCoy Solar.

respond to the White House's directive: "On Monday, David Hayes and I attended a meeting called by the White House on the high priority infrastructure projects. The White House requested the preliminary lists of each agency's proposed projects. David, Liz, Janea, and I carried out the due diligence you asked us to complete and have recommended three projects: (1) 'McCoy Solar Project' – a 750 MW photovoltaic solar project in California that would be developed by NextEra Energy."¹⁷⁴

Ms. Scott sent a follow-up message to NextEra asking some additional questions on September 23, 2011, and NextEra provided the additional information on September 26, 2011.¹⁷⁵

On September 27, 2011, Mr. Black and Mr. Markarian had dinner at the restaurant Proof in downtown Washington, D.C.¹⁷⁶ Mr. Markarian had recently transferred to the capital to oversee federal government relations for NextEra and wanted advice from Mr. Black about interacting with Congress.¹⁷⁷ According to Mr. Black, the focus of the dinner was on policy issues like the production tax credit and the various staff people in the Senate that Mr. Black used to work with whom Mr. Markarian should meet.¹⁷⁸ Knowing that Mr. Black and Ms. Yamout were dating, Mr. Markarian brought up the possibility of Ms. Yamout transferring to NextEra's Washington, D.C. office during the dinner.¹⁷⁹ Mr. Black said he responded by telling Mr. Markarian that D.C. would be a good experience for her, that it would be good for her career, and that he had benefitted from his experience in D.C.¹⁸⁰ He said he also told him that he had plans to return to Colorado and the West when he decided to leave the Department and it was not in his interest for her to move to D.C.¹⁸¹

"I want to be clear: the dinner was not about that subject," Mr. Black told Committee staff in an interview. "It came up but the dinner happened because Dave was new to town and had no federal lobbying experience. The dinner was more about David Markarian."¹⁸²

Mr. Black told Committee staff he agreed to follow up with Mr. Markarian with the names and contact information for some Congressional staffers he could contact. The Committee has not been provided any emails documenting this occurred.

¹⁷⁴ Steve Black, Counselor to the Secretary, *Weekly Report to the Secretary*, September 15, 2011.

¹⁷⁵ September 26, 2011 email at 5:07 PM from Meg Russell [NextEra Project Director] to Janea Scott and Steve Black, copy to David Markarian, et al., subject: RE: McCoy Solar.

¹⁷⁶ May 9, 2014 interview with Steve Black (Committee staff notes).

¹⁷⁷ December 18, 2013 meeting with NextEra counsel, WilmerHale (Committee staff notes); and May 9, 2014 interview with Steve Black (Committee staff notes).

¹⁷⁸ May 9, 2014 interview with Steve Black (Committee staff notes).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

At the same time, Mr. Black continued to recommend the McCoy solar project in response to the President's infrastructure memorandum.

According to documents provided by the Department, NextEra's McCoy solar development was in fact one of the projects that had been suggested to the White House in response to the President's infrastructure memorandum.

"I spoke with Heather Zichal tonight before boarding the plane and she told me that the overall project list looks thin," Deputy Secretary David Hayes wrote in an early morning email on September 28, 2011. "She asked whether we had additional projects that we might propose. (She also asked whether our solar project would be jeopardized by the absence of a loan guarantee.)"¹⁸³

Mr. Black responded later the morning of September 28, 2011, saying, "My thoughts on the additional wind, solar and/or transmission projects are as follows. From where I sit, and notwithstanding Heather's suggestion, the most important criterion guiding our selection should be ultimate likelihood of success (steel in the ground). ... In answer to Heather's question about our McCoy project, NextEra can and will likely finance the project on its balance sheet and happily does not need a DOE loan guarantee."¹⁸⁴

Cryptic Email Prompts Request for Ethics Advice

Later on September 28, Mr. Markarian sent an email to Mr. Black, writing, "Planted the Seed Up Here With This Guy. Well received. Next, down to Juno. Haven't told her yet. Will wait until I have a firmer grasp on it."¹⁸⁵

In an interview with Committee staff, Mr. Black described the email as "bizarre" and that he attributed it to Mr. Markarian's "lack of experience in Washington. I honestly didn't know what to make of it."¹⁸⁶ Mr. Black responded 19 minutes later and asked "please wall me off from any further discussion of this topic. Many thanks."¹⁸⁷ He also contacted the Department's Designated Ethics Official, Ms. Loftin, to discuss the matter, and the two of them met later that day.¹⁸⁸

¹⁸³ September 28, 2011 email at 1:49 AM from David Hayes to Steve Black, Janea Scott, and Elizabeth Klein, subject: FW: Priority Projects Conf Call 1pm Thursday.

¹⁸⁴ September 28, 2011 email at 11:01 AM from Steve Black to David Hayes, et al., subject: RE: Priority Projects Conf Call 1pm Thursday.

¹⁸⁵ September 28, 2011 email at 5:38 PM from David Markarian to Steve Black, subject: Update.

¹⁸⁶ May 9, 2014 interview with Steve Black (Committee staff notes).

¹⁸⁷ September 28, 2011 email at 5:57 PM from Steve Black to David Markarian, subject: RE: Update.

¹⁸⁸ May 9, 2014 interview with Steve Black (Committee staff notes).

Email from NextEra Official Discussing Transfer

Black, Steve

From: Black, Steve
Sent: Wednesday, September 28, 2011 5:57 PM
To: 'Markarian, David'
Subject: RE: Update

Dave, please wall me off from any discussion of this topic. Many thanks.

Steve

From: Markarian, David [mailto:David.Markarian@nexteraenergy.com]
Sent: Wednesday, September 28, 2011 5:38 PM
To: Black, Steve
Subject: Update

Planted the Seed Up Here With This Guy. Well received.

Next, down to Juno.

Haven't told her yet. Will wait until I have a firmer grasp on it.

David K. Markarian, Esq.
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Mr. Black said he and Ms. Loftin met for about 30 minutes and he walked her through the facts as he saw them and showed her the email from Mr. Markarian.¹⁸⁹

Ms. Loftin told Committee staff that, at this meeting, Mr. Black showed her the email exchange with Mr. Markarian and informed her he had begun a relationship with a NextEra employee based in California.¹⁹⁰ Ms. Loftin said she was not told Ms. Yamout's name, that Ms. Yamout was a lobbyist for the company, or that Ms. Yamout had a personal friendship with both Mr. Black and Ms. Scott from their work together on the REPG.¹⁹¹

¹⁸⁹ *Id.* In a meeting with Committee staff, NextEra's counsel said the company was unable to locate a copy of the September 28, 2011 email exchange between Mr. Markarian and Mr. Black. The Department provided a copy in its February 10, 2014 document production.

¹⁹⁰ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

¹⁹¹ *Id.* During her interview, Ms. Loftin was shown copies of emails dating from 2010 and 2011 that had been sent among Mr. Black, Ms. Yamout, and Ms. Scott discussing dinners and personal time spent together. Ms. Loftin said this was the first time she had seen these emails and she had not previously been aware of such communications or interactions between them. She said the emails showed that the three were friends but the emails did not demonstrate that Mr. Black or Ms. Scott

As Ms. Loftin explained in the interview, the Office of Government Ethics has determined that the term “covered relationship” does not include an employee’s relationship with a boyfriend and girlfriend unless additional criteria apply, such as the two sharing a household or comingling or owning assets.¹⁹² She said she did not think Mr. Black’s relationship, as he described it, would be a covered relationship under the ethics regulations.¹⁹³

Asked during the interview why Mr. Black had contacted her for advice when he did, Ms. Loftin answered it was because of the email he had received from Mr. Markarian.¹⁹⁴ She said Mr. Black told her he did not know why he had received the email from Mr. Markarian and he did not request the company transfer his new girlfriend to Washington, D.C.¹⁹⁵ She said they discussed his girlfriend’s possible relocation to Washington, D.C., as part of their broader discussion about the email from Mr. Markarian, but Ms. Loftin said she did not know Mr. Black and Mr. Markarian had discussed it at dinner the night before.¹⁹⁶ She said she understood Mr. Black’s request to be “walled off” to be referring to discussions about the transfer and not NextEra matters generally.¹⁹⁷

When asked if it was appropriate for Mr. Black to have discussed his girlfriend’s possible transfer with Mr. Markarian in the first place, Ms. Loftin paused before saying, “I haven’t considered that question. I would want to think about that.”¹⁹⁸ She admitted that she did not ask many follow-up questions at this meeting about the nature of his relationship or Ms. Yamout’s work.¹⁹⁹

Ms. Loftin said she told Mr. Black that she would need more information before she could render an ethics opinion, and the two agreed to schedule a follow-up meeting that would also include Ms. Loftin’s immediate supervisor, Deputy

had a covered evidence a covered relationship under 18 U.S.C. Section 208. Whether someone could questions their impartiality, she could not tell based on the emails she had been shown – only that they were friends, which without more information was insufficient to warrant recusal.

¹⁹² The list of covered relationships in § 2635.502(b)(1) is silent on a number of close relationships that could easily cause a reasonable person to question the employee’s impartiality, such as non-cohabitating romantic partners and close personal friendships. These omissions were questioned during the rulemaking process. Specifically, “[o]ne agency suggested that the list of covered relationships . . . be expanded to include anyone with whom the employee has a ‘close personal friendship.’ Another agency noted that the definition would not cover a boyfriend or girlfriend.” OGE declined to expand the list of covered relationships, leaving agencies to struggle through an increasing number of situations involving long-term, committed relationships and other close relationships that are not explicitly covered by § 2635.502(b)(1).

¹⁹³ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

Solicitor Art Gary.²⁰⁰ After the meeting with Mr. Black, she said she informed Mr. Gary and the Solicitor, Hilary Tompkins, about Mr. Black's relationship.²⁰¹ She said she needed additional facts before she could render an ethics opinion but said she warned them that Mr. Black might have to recuse himself from NextEra matters.²⁰²

On September 29, 2011, Mr. Black sent a White House official an email with DOI's nominations for infrastructure projects.²⁰³ NextEra's McCoy project was one of the projects recommended.

Mr. Hayes sent an email to Mr. Black and others a couple days later, thanking him for considering Heather Zichal's comments on the projects being recommended, writing, "This all makes good sense to me. Thanks for looking at the roster of projects in the pipeline again, Steve."²⁰⁴

Mr. Black told Committee staff that he did not know if Deputy Secretary Hayes or others at the Department knew of his relationship with Ms. Yamout at the time NextEra's McCoy project was being touted to the White House.²⁰⁵ Given that the relationship was less than two months old and long-distance, Mr. Black said he did not think it was necessary to inform his colleagues that he had begun dating a NextEra lobbyist. In addition, the fact that Ms. Yamout worked on state matters other than California and was not a federal lobbyist further minimized the need to inform his colleagues, he said.²⁰⁶ In his interview with Committee staff, Mr. Kornze said he recalled becoming aware of Mr. Black's relationship in the fall of 2011, but at that time he did not know who Ms. Yamout was or where she worked.²⁰⁷ Mr. Kornze said he recalled that at some point he and Mr. Black had discussed going to a movie festival together and that Ms. Yamout was also planning to be there as Mr. Black's date.²⁰⁸

Request for Formal Ethics Opinion and Department's Slow Response

Early on the morning of October 5, 2011, news broke that the CEO of NextEra's competitive power generation unit had announced his departure from the company.²⁰⁹ The same morning, a BLM official informed Ms. Scott that the White

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ September 29, 2011 email at 6:01 PM from Steve Black to Lisa Brown (White House), Adam case, copy to Lindsay Barenz [White House], David Hayes, Elizabeth Klein, and Janea Scott, subject: Final DOI projects list.

²⁰⁴ October 2, 2011 email at 11:15 AM from David Hayes to Steve Black, Janea Scott, and Elizabeth Klein, subject: FW: Priority Projects Conf Call 1pm Thursday.

²⁰⁵ May 9, 2014 interview with Steve Black (Committee staff notes).

²⁰⁶ *Id.*

²⁰⁷ May 22, 2014 interview with Neil Kornze (Committee staff notes).

²⁰⁸ *Id.* Mr. Kornze said he did not end up going to the movie festival with Mr. Black and Ms. Yamout.

²⁰⁹ See Associated Press, *NextEra Energy unit chief leaves company*, Oct. 5, 2011, available at: <http://finance.yahoo.com/news/NextEra-Energy-unit-chief-apf-3845813272.html>.

House had apparently selected the McCoy solar project and as a result BLM was meeting with the General Services Administration to set up a website to track the project's progress.²¹⁰ Ms. Scott forwarded the message to Mr. Black, commenting, "It would still be helpful to know who is setting up these meetings, so we can ask them to invite us in advance next time and make sure they've got the right points of contact."²¹¹

Later that morning, Mr. Black's assistant contacted Ms. Loftin and Mr. Gary about whether they could do a brief meeting at 3:30 pm that day.²¹² Ms. Yamout (using her NextEra account) also sent an email with the press release about the management shake up to Ms. Scott, who forwarded it to Mr. Black.²¹³

Later that day, at 3:57 pm, Ms. Scott sent draft summaries of DOI's proposed infrastructure projects to Mr. Black. At 5:08 pm, Mr. Black sent an email to a White House official informing them about the management shakeup at NextEra, writing, "This is arguably a material change vis-à-vis McCoy. I haven't talked to the company yet, and I do not expect this announcement to slow down our efforts on McCoy or any other pending NextEra project, but I wanted you to have the information."²¹⁴ At 5:47 pm, a NextEra official sent an email to Mr. Black asking for a time to talk.²¹⁵

In interviews with Committee staff, both Ms. Loftin and Mr. Gary characterized their October 5 meeting with Mr. Black as brief. Mr. Black agreed to provide them more information about his relationship and work on NextEra matters.²¹⁶

On October 11, 2011, the White House announced its selection of 14 priority infrastructure projects to undergo expedited permitting and environmental reviews.²¹⁷ Next Era's McCoy project was not on the list.

²¹⁰ October 5, 2011 email at 7:50 AM from Ray Brady to Thomas Pogacnik, copy to Neil Kornze, Janea Scott, *et al.*, subject: FW: Priority Projects: IT Dashboard Kick-Off –Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review.

²¹¹ October 5, 2011 email at 8:02 AM from Janea Scott to Steve Black, subject: FYI, BLM Should have someone there today: Priority Projects: IT Dashboard Kick-Off – Speeding Infrastructure Development through More Efficient Permitting and Environmental Review.

²¹² October 5, 2011 email at 10:35 AM from Gisella Ojeda-Dodds to Melinda Loftin and Art Gary, subject: Meeting today.

²¹³ October 5, 2011 email at 12:27 PM from Janea Scott to Steve Black, subject: FW: NextEra Energy Organizational Changes.

²¹⁴ October 5, 2011 email at 5:08 PM from Steve Black to Nathaniel Keohane [at White House email address], subject: NextEra CFO Pimentel Named CEO of Energy Resources Unit.

²¹⁵ October 5, 2011 email at 5:47 PM from Matt Handel [NextEra] to Steve Black, subject: McCoy Solar.

²¹⁶ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

²¹⁷ See Office of the Press Secretary, *Obama Administration Announces Selection of 14 Infrastructure Projects to be Expedited Through Permitting and Environmental Review Process*, Oct. 11, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/10/11/obama-administration-announces-selection-14-infrastructure-projects-be-e>.

Also on October 11, 2011, Mr. Black sent a six-page “confidential memorandum” to Ms. Loftin and Mr. Gary. The memorandum described Mr. Black’s recent work identifying infrastructure projects to submit to the White House in response to the President’s memorandum, the September 28, 2011 email from Mr. Markarian, the White House’s decision not to include NextEra’s McCoy solar project, and other NextEra projects pending Departmental action.

In the memorandum, Mr. Black stated he had met with Mr. Markarian twice to discuss specific projects under development, including one of the REPG meetings, and twice for dinner, and he met with other company officials on numerous occasions. The first dinner with Mr. Markarian, according to the memorandum, occurred September 6, 2011 and also included the company’s CEO Mitch Davidson and Mr. Spielman, an attorney for NextEra and friend of Mr. Black. The second dinner occurred September 27, 2011, at Mr. Markarian’s request, and did not include anyone else.

The memorandum also goes into detail about the nature of Mr. Black’s relationship with Ms. Yamout and her work for the company at that time:

M. lives and works in Sacramento. She started her job with NextEra in July and was hired as a Director of Governmental and Regulatory Affairs with primary responsibility for several western states, not including California. She does not have any responsibility for project development for NextEra, she does not have responsibility for government relations in California at the state or federal level, where most of the company’s projects on BLM land are located, and she is not a registered lobbyist. Consequently, she does not have any responsibility for lobbying the Administration on behalf of NextEra.

I have know and worked with M. for more than two years – long before she began working for the company – and I consider her a friend. In August, after a river trip together, M. and I decided to explore a romantic relationship. We do not live together, we do not have any financial ties, nor do we have any current plans to live together or to establish a life partnership. Nevertheless, to avoid any potential conflict, we informed M.’s boss, Dave, and Andy Spielman, who represents the company on energy issues and who is a personal friend, of our relationship. We specifically asked that they not include M. in any meetings or communications with me concerning the company’s business before the Department and, instead, they act as my principal points of contacts on matters involving the company. They agreed.

When M. took her job with NextEra in July, she did so with the understanding that she would be working directly for Dave. Consequently, when Dave announced his move to D.C. and the change in his responsibilities, M. expressed an interest in transferring to Washington as well. I was aware of her interest in moving to D.C. when I met Dave for dinner on September 27. During dinner, Dave stated that he supports M.'s request to move to D.C. and that he was working to help her accomplish that goal. I made clear that while there may be good reasons for M. to move to D.C., I have no personal interest in that decision. I serve in Washington temporarily at the request of, and as Counselor to, Secretary Salazar. As the Secretary knows, however, Colorado is the state of my permanent residence and I intend to return to Colorado at the conclusion of my service in this Administration. At no time did I advocate for or otherwise ask Dave to support M.'s request to move to D.C., nor did I indicate any preference for the outcome of that particular decision.

The following day, I received an e-mail communication from Dave, which refers discreetly to his efforts in connection with M.'s possible relocation to D.C. I believe Dave sent his e-mail as a courtesy and follow-up to our conversation the previous evening. He apparently was attempting to inform me of his conversations within the company regarding M.'s request to transfer to D.C. But I did not expect the e-mail, and I was concerned that Dave's effort to be discreet might be misinterpreted, particularly in light of my pending recommendation to name the McCoy solar project as one of the Department's high-priority infrastructure projects. I replied to Dave's email with a request he screen me off from any further communications regarding the subject of the e-mail. And I shared Dave's e-mail and my reply with you the same day.

There is no connection whatsoever between my relationship with M. and my recommendation to include the McCoy project on the Department's list of priority infrastructure projects. In fact, McCoy was added to the Department's list of 2012 priority projects – a list that was developed by the Strike Team after months of intra-Departmental review – in March, five months before M. started with the company. My recommendation to identify it as a high priority infrastructure project was made and communicated independent of and before my dinner meeting with Dave and was not influenced in any way by my relationship with M. Nor did Dave imply any connection between his support for her request to move to D.C. and my decision to recommend the McCoy project as a high-priority

infrastructure project. Indeed, I do not recall discussing the McCoy project at all during our dinner meeting on September 27.

In a section marked “Conclusion,” Mr. Black wrote:

As we have discussed, these facts seem to present two issues. First, is there any non-negligible risk that my actions to date might be taken out of context and misconstrued in a way that could embarrass the Secretary and the WH and, if so, what steps should be taken to minimize and mitigate that risk? We agreed last week that this is a political question, not an ethical question. In light of the WH’s recent and independent decision not to include the McCoy project on its list of high priority infrastructure projects, this issue seems moot.

Second, what steps must I take or should I take to avoid any potential conflict of interest or appearance of impropriety going forward? Because I do not have any financial interest in NextEra and I do not have any financial ties to M., there is no direct conflict of interest. Nevertheless, I want to avoid any appearance of bias or impropriety in connection with my role in prioritizing or recommending for approval pending projects applications from NextEra. In that regard, I have requested additional information and your analysis of the facts to determine whether, under applicable ethics requirements and guidelines, I should recuse myself from NextEra’s business before the Department.”

The version of Mr. Black’s October 11 memorandum provided by the Department on the eve of Ms. Loftin’s interview contains several hand written marks, as well as seven redacted areas in the margins. In her interview, Ms. Loftin said the version provided to the Committee was hers, and the notes were things she wanted to follow up on or discuss with Mr. Gary.²¹⁸ She said one of things she noted in her comments and wanted to consider in more depth and get Mr. Gary’s views on was whether Mr. Black’s relationship raised an appearance of impartiality that would warrant his recusal.²¹⁹ She said she had articulated that concern to Mr. Gary and Solicitor Tompkins after she first met with Mr. Black at the end of September, before Mr. Black provided his memorandum.²²⁰

In her interview, Ms. Loftin also disputed the assertion in Mr. Black’s memorandum that his prior conduct was a political rather than ethical issue, but she agreed the Ethics Office was focused on whether he should be recused going

²¹⁸ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

²¹⁹ *Id.* See 5 C.F.R. §§ 2635.501-2635.503

²²⁰ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

forward, not investigating whether he previous work on NextEra issues violated ethics laws.²²¹

Ms. Loftin said she provided Mr. Gary with her comments on Mr. Black's memo and awaited further direction from Mr. Gary.²²² Emails provided by the Department indicate that in the months following the October 5 meeting, Mr. Black tried on several occasions to arrange conversations or meetings with Ms. Loftin to discuss his request for ethics advice, but the Ethics Office was slow to close the loop on Mr. Black's request.²²³

Ms. Loftin explained the delay in responding was because she felt she could not advise Mr. Black directly.²²⁴ She said she previously had been instructed by Solicitor Tompkins not to interact or advise the political appointees directly unless she first cleared the advice through Mr. Gary or Vincent Ward, a political appointee in the Solicitor's Office. She said the instruction came after a senior political appointee had been displeased over advice she had given about whether an appointee could accept a free meal as part of an event. She said that the instruction was later scaled back so she had to vet her advice only for those appointees in the Secretary's Office, not the entire Department.

Ms. Loftin explained the delay in responding was because she felt she could not advise Mr. Black directly. She said she previously had been instructed by Solicitor Tompkins not to interact or advise the political appointees directly unless she first cleared the advice.

"There was a layer between me and Steve Black. I could not render an opinion to the front office that would include Steve Black without Art Gary," Ms. Loftin said. "My instructions as I saw them, were that I was limited in my communications to the front office, the Secretary's staff, without Art Gary and Vince Ward. If questions came in, and I wanted to respond, I was to run it through Art Gary and then Vince Ward."²²⁵

In his interview, Mr. Gary disputed Ms. Loftin's characterization that she was under a standing order to clear all advice to political appointees through him or Mr. Ward. Mr. Gary said there were discreet situations where Ms. Tompkins had been briefed by the Ethics Office and asked to be kept informed on matters that had to be

²²¹ *Id.*

²²² *Id.*

²²³ See November 21, 2011 email at 9:49 PM from Melinda Loftin to Steve Black, subject: contact; see also December 14, 2011 email at 10:34 PM from Melinda Loftin to Steve Black, no subject.

²²⁴ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

²²⁵ *Id.*

cleared through him or Mr. Ward, but he said Ms. Loftin was free to interact with the political appointees, including Mr. Black, and was encouraged to do so.²²⁶

Mr. Gary told Committee staff that he did not recall receiving the marked-up version of Mr. Black's memorandum that contained Ms. Loftin's comments and was unaware she was waiting for his input before following up with Mr. Black, but he recalled having his own questions about Mr. Black's narrative and whether there was a question of impartiality.

On December 14, 2011, for example, Mr. Black contacted Ms. Loftin and left a voicemail.²²⁷ She responded by email, writing, "I got your call today and had a meeting scheduled with Art but he had to cancel. I will try to get with him this week and get back to you."²²⁸ On December 15, 2011, Ms. Loftin sent an email to Mr. Gary, informing him that "Steve Black would like to talk to us about his issue. Please let me know when you have finished your review of our edits so we can get back to Steve."²²⁹ Mr. Gary responded later that day, "Hope to have time next week."²³⁰ Ms. Loftin informed Mr. Black on December 16, 2011 that she had "checked with Art and he hopes to have something next wk [sic]."²³¹ Mr. Black then asked Ms. Loftin to call her to discuss.²³²

Mr. Gary said in his interview with Committee staff that in late 2011 he had been selected for a job at another agency and was in the process of "lightening his

"Thanks for taking the time last week in DC to meet with us on the Genesis matter regarding Native American artifacts. We had a follow up meeting with Jim Kenna in Sacramento earlier this week, per your advice, and will be working with his team going forward. Separately, I left you a voicemail message earlier today too regarding North Sky River wind in California We are very grateful for the news yesterday on the [Finding of No Significant Impact] and the formal document. Thanks for all you did to help."
— NextEra Email to Steve Black

²²⁶ May 27, 2014 interview with Art Gary (Committee staff notes).

²²⁷ See December 14, 2011 email at 10:34 PM from Melinda Loftin to Steve Black, no subject.

²²⁸ December 14, 2011 email at 10:34 PM from Melinda Loftin to Steve Black, no subject.

²²⁹ December 15, 2011 email at 6:27 PM from Melinda Loftin to Art Gary, subject: RE Negative response.

²³⁰ December 15, 2011 email at 6:27 PM from Art Gary to Melinda Loftin, subject: RE Negative response.

²³¹ December 16, 2011 email at 8:59 PM from Melinda Loftin to Steve Black, no subject.

²³² December 16, 2011 email at 11:22 PM from Steve Black to Melinda Loftin, no subject.

load.”²³³ He said there was an interest in resolving the issue of Mr. Black’s need for a recusal but no particular sense of urgency. He said with all of the issues being handled by the Department, not all of them can be “priority number one.” Mr. Gary said the Ethics Office needed more information from Mr. Black before an opinion could be rendered, and Mr. Black had not yet provided it.

Interactions with NextEra Continued Pending Ethics Advice

Meanwhile, during this period when Mr. Black was waiting to hear from the Ethics Office, and the Ethics Office was waiting for additional information from Mr. Black, Ms. Yamout transferred to NextEra’s Washington, D.C. office and Mr. Black continued to have interactions with NextEra about specific matters pending before the Department.²³⁴

For example, in late November 2011, NextEra contacted Mr. Black and Ms. Scott for their assistance in resolving an issue with NextEra’s Genesis project. A number of Native American artifacts had been found at the project site, causing delays to the project. Mr. Black forwarded the message to Mr. Kornze and others at BLM.²³⁵ A BLM official responded, “Thank you Steve. I have copied our cultural resources staff on your message. The appropriate actions are being taken and proper protocols are being followed. We will continue to monitor progress.”²³⁶

Mr. Black sent another message to BLM Director Abbey and Mr. Kornze on December 13, 2011, informing them that “The company has asked to meet with me tomorrow. I’ll keep you posted, and we’ll invite you and Neil to the meeting (understand if you’re not available).”²³⁷ BLM Director Abbey wrote to Mr. Black that, “While it appears the contact with the Tribes should have taken place sooner than it did, the BLM in CA has not identified next steps that seem reasonable given the dilemma they now find themselves with.”²³⁸

Mr. Spielman, NextEra’s attorney whom Mr. Black also informed about the relationship, arranged for the December 14, 2011 meeting between the company and Mr. Black to which Mr. Abbey and Mr. Kornze were also invited.²³⁹ On

²³³ May 27, 2014 interview with Art Gary (Committee staff notes).

²³⁴ May 9, 2014 interview with Steve Black (Committee staff notes).

²³⁵ December 5, 2011 email at 4:44 PM from Steve Black to Janae Scott, Neil Kornze, and Ray Brady, copy to Thomas Pogacnik and James Kenna, subject: FW: Genesis Solar Project.

²³⁶ December 6, 2011 email at 6:12 AM from Ray Brady to Steve Black, Janae Scott, and Neil Kornze, copy to Thomas Pogacnik, et al., subject: Re: Genesis Solar Project.

²³⁷ December 13, 2011 email at 11:51 AM from Steve Black to Bob Abbey, copy to Neil Kornze, subject: RE: Genesis.

²³⁸ December 13, 2011 email at 10:03 AM from Bob Abbey to Steve Black, copy to Neil Kornze, subject: RE: Genesis.

²³⁹ See December 13, 2011 email at 4:45 PM from Gisella Ojeda-Dodds to Neil Kornze, copy to Steve Black, subject: FW: Meeting Tomorrow.

December 16, 2011, Mr. Black sent an email to Mr. Abbey discussing the need to arrange a follow-up meeting the next week.²⁴⁰

On December 21, 2011, the Bureau of Land Management approved a right of way for NextEra's North Sky River wind project, which although it was being developed on private land needed improvements made and access to a BLM road.²⁴¹ The project began operation the following December.²⁴²

In another example, a NextEra official sent an email to Mr. Black on December 22, 2011, writing, "Thanks for taking the time last week in DC to meet with us on the Genesis matter regarding Native American artifacts. We had a follow up meeting with Jim Kenna in Sacramento earlier this week, per your advice, and will be working with his team going forward. Separately, I left you a voicemail message earlier today too regarding North Sky River wind in California. We are very grateful for the news yesterday on the [Finding of No Significant Impact] and the formal document. Thanks for all you did to help."²⁴³

Mr. Black responded, "Mike, thanks for your kind note. I'm glad to hear the good news on North Sky River. And I hope you and Jim worked out a satisfactory plan to resolve the issues at Genesis. Please don't hesitate to call me or Janea if we can help."²⁴⁴

In her interview, Ms. Loftin said she was unaware of the emails and meetings between Mr. Black and NextEra officials in late 2011 and early 2012, but she said he was not prohibited from having such interactions because at that time she had not officially determined that an appearance of impartiality existed and he had not been instructed to recuse himself, even though a reasonable person might have questioned Mr. Black's actions at the time.²⁴⁵ Absent the formal determination by her, Ms. Loftin said Mr. Black was free to continue interacting with NextEra executives and working on NextEra projects while dating a lobbyist for the company. On the issue of whether Mr. Black should have disclosed his relationship

²⁴⁰ See December 16, 2011 email at 2:53 PM from Steve Black to Robert Abbey, copy to Neil Kornze, subject: RE: Genesis.

²⁴¹ U.S. Bureau of Land Management, Decision Record: North Sky River – Right of Way Application for Access Roads, Dec. 2011, available at http://www.blm.gov/pgdata/etc/medialib/blm/ca/pdf/ridgecrest/northsky.Par.2347.File.dat/CAC_A52626NSR_Decision_Record_signed_508.pdf. BLM also issued a Finding of No Significant Impact under the Endangered Species Act for the right of way.

²⁴² According to news reports, a protected golden eagle was reported killed at the facility in January 2013, a month after the wind project went on-line. See Chris Clarke, *Feds Ask for Help in Wind Turbine Eagle Deaths*, KCET, March 13, 2013, available at <http://www.kcet.org/news/rewire/wind/agency-asks-for-help-in-wind-turbine-eagle-deaths.html>.

²⁴³ December 22, 2011 email at 9:39 AM from Mike O'Sullivan to Steve Black, copy to Randall LaBauve, Mitch Davidson, and David Markarian, subject: Thank you.

²⁴⁴ December 22, 2011 email at 12:08 PM from Steve Black to Mike O'Sullivan, copy to Randall LaBauve and David Markarian, subject: RE: Thank you.

²⁴⁵ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

to the Department and sought ethics advice sooner, considering NextEra and its outside counsel had already been informed, Ms. Loftin said he was not required to but in her opinion, yes, he should have.

However, it was not until January 2012 – months after Mr. Black first sought ethics advice – that the Ethics Office followed up.²⁴⁶ Ms. Loftin scheduled a meeting with Mr. Gary for January 4, 2012 to discuss Mr. Black's ethics issue, and on January 10, 2012, Mr. Gary sent Mr. Black an email saying the Ethics Office would like to schedule time to meet after he returned from an upcoming trip.²⁴⁷

Later that day, Ms. Scott sent an email to Ms. Loftin and others from the Solicitor's Office, informing them about the trip Mr. Black was scheduled to take to attend a meeting the next day in Arizona. The purpose of the meeting was to discuss how to promote renewable energy in Arizona, and the meeting included state and local officials and company representatives, including Mr. Markarian from NextEra.²⁴⁸

The follow-up meeting between Ms. Loftin, Mr. Gary and Mr. Black occurred on January 19, 2012.²⁴⁹ Ms. Loftin said during her interview with Committee staff that they discussed whether there was an appearance of impartiality and they would need more information before an official opinion could be rendered. Ms. Loftin agreed to provide Mr. Black with the criteria from the OGE regulation that she would use to analyze the relationship. Ms. Loftin also said it was at this meeting when she learned that Ms. Yamout had in fact relocated to Washington, D.C.

In his interview, Mr. Black said in the months prior to the January 19 meeting he was awaiting an official opinion from the Ethics Office and that meeting was the first time he said he was told the Ethics Office needed more information before an opinion could be issued. He said he was proceeding the way he thought appropriate under his own reading of the ethics rules while he awaited an official ethics opinion or direction to recuse himself. He said during this time period no one at the Department advised him to avoid working on NextEra matters.

²⁴⁶ In his interview with Committee staff, Mr. Black said his notes indicate he met several times and phone calls with Mr. Gary and Ms. Loftin between October 2011 and January 2012, including a meeting on December 22, 2011. The Department has not provided any calendar entries or emails indicating such meetings occurred, including on that date. Ms. Loftin in her interview recalled that a follow-up meeting did not occur until January 2012.

²⁴⁷ January 10, 2012 email at 10:25 AM from Art Gary to Steve Black, copy to Melinda Loftin, subject: Meeting.

²⁴⁸ January 10, 2012 email at 6:59 PM from Janea Scott to Melinda Loftin, Edward Keable, Margaret Bradley, no subject.

²⁴⁹ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

On January 20, 2012, NextEra filed its 2011 year-end lobbying report with Congress, listing Ms. Yamout as having worked as a registered lobbyist at that time focused on energy tax policies and nuclear safety issues.²⁵⁰

On January 27, 2012, Ms. Loftin sent an email to Mr. Black stating, “As we discussed you have a close personal relationship with an individual who works for NextEra Energy. Accordingly, we will need additional information in order to determine whether or not a reasonable person with knowledge of the relevant facts would question your impartiality in particular matters involving NextEra, and, if so, whether or not you should be authorized to participate, notwithstanding such an appearance concern.”²⁵¹ The email also asked Mr. Black to provide detailed answers to six questions, including the nature and importance of his role in the underlying matters, the sensitivity of the issue, the difficulty in reassigning the matter to another employee, and the nature of the relationship involved.²⁵²

Mr. Black sent an email to Ms. Loftin on February 2, 2012, asking she send him the citation to the underlying regulation she would be using to make her evaluation and any relevant guidance.²⁵³ Ms. Loftin responded later that day, informing him the guidance was from the Office of Government Ethics and promising to get him a copy.²⁵⁴

On February 6, 2012, more than four months after he first informed the Ethics Office and three months after he gave them his first memorandum about his relationship, Mr. Black provided a seven-page memorandum to Ms. Loftin and Mr. Gary. The version provided by the Department on September 25, 2013 was redacted in three places; the Department provided an unredacted copy for in camera review by Committee staff on November 14, 2013. One of the redacted sections discusses Mr. Black’s view that the issue seemed to be more of a political embarrassment that could lead to a *Washington Post* story but not a violation of ethics rules. Mr. Black’s February 2012 memorandum omits the discussion of how the Genesis solar project was nominated to the White House in response to the President’s infrastructure memorandum that was central to his October 11, 2011 memorandum.

In the February 2012 memorandum, Mr. Black argued that recusal was unnecessary because many of the permitting and prioritization decisions affecting

²⁵⁰ NextEra Energy, Inc., 2011 Q4 Lobbying Report for NextEra Energy, Inc., *available at* <http://disclosures.house.gov/ld/pdfform.aspx?id=300451721>.

²⁵¹ January 27, 2012 email at 4:56 PM from Melinda Loftin to Steve Black, subject: Impartiality in the Performance of Official Duties.

²⁵² *Id.*

²⁵³ February 2, 2012 email at 7:05 PM from Steve Black to Melinda Loftin, copy to Art Gary, subject: RE: Impartiality in the Performance of Official Duties.

²⁵⁴ February 2, 2012 email at 7:07 PM from Melinda Loftin to Steve Black, copy to Art Gary, subject: RE: Impartiality in the Performance of Official Duties.

NextEra had already been decided and his interactions with NextEra were similar to the interactions he has with other renewable energy companies:

Importantly, as my track record demonstrates and as other companies would attest, I regularly provide exactly the same kind of assistance (described above) to most if not all other companies with applications pending before the Department, especially those with projects on our priority list. I have not done anything for or on behalf of the company – nor would I do anything in the future for or on behalf of the company – that I would not also do for any other company in similar circumstances. I make myself equally available to all companies – and other stakeholders – who have any interest in the Department’s efforts to develop renewable energy on public lands. And I work consistently and without bias in favor of (or against) any company or individual to achieve the Secretary’s renewable energy goals, fairly and responsibly. As noted earlier the company has one project on our 2012 priority list and at least one project – already permitted – that will require my ongoing attention in 2012. And we have more than a dozen other projects on our 2012 priority list, and I am working on dozens of other matters. I work diligently on each of those matters out of loyalty to my boss, not any more nor any less on an individual project because of my personal relationships.

Mr. Black also suggested his recusal would interfere with the Department achieving the Secretary’s renewable energy goals and reassigning his responsibilities to others, namely his deputy, Ms. Scott, would have little practical effect:

As a practical matter, it would be difficult to reassign and screen me off from all matters involving this company pending before the Department. And to do so may affect the Department’s ability to achieve the Secretary’s priorities with respect to renewable energy. The reasons for this are two-fold. First, I am singularly focused on the Secretary’s renewable energy priorities. With the possible exception of Janea Scott, my deputy, there is no other individual on his staff or among the assistant Secretaries or their deputies who knows as much about these projects, has the relationships with the applicant and key stakeholders, and who has the time to devote to the success of these projects. Second, I have a small staff, consisting of one deputy and one special assistant. We work closely together and coordinate daily. A confidentiality wall between my deputy and me, for example, would be difficult to administer. The Secretary

*knows we are responsible for the results the Department has achieved on this front, and a change in protocol with respect to only one company would be confusing and potentially disruptive. Having said that, it would be possible to recuse myself from all matters involving the company pending at Interior. But based on the facts and safeguards I have already put in place, I do not think it necessary. ****

*In my judgment, the only meaningful adjustment would be recusal from matters involving the company with a confidentiality wall. Janea could continue to lead strike team and REPG meetings as necessary (I would step out during discussion involving company projects), work with BLM and FWS and others to ensure that issues affecting those projects are resolved in a timely way and to the satisfaction of the Secretary and other decision makers. Given my supervisory responsibility over Janea, however, I am not certain that adjustment would materially change the equation. The next best option would be to reassign matters involving the company to the Deputy Secretary's Office of the [Assistant Secretary for Land and Minerals]. ****

Based on what I believe is an objective analysis of these factors, it is my judgment that a reasonable person with knowledge of all the relevant facts would not question my impartiality in the performance of my official duties. The person with whom I have a relationship is neither a member of my household nor has any direct or indirect interest in matters pending before the Department. Further, we have taken all reasonable and practical steps to avoid or minimize an appearance concern, short of recusal. Recusal would be impractical for the reasons stated.

Contradictory Accounts about Need for Recusal

Mr. Black told Committee oversight staff during his interview that he called Mr. Gary several times after he submitted his February 6, 2012 memorandum because he knew Mr. Gary was leaving the Department at the end of the month and he had more confidence in receiving a response from Mr. Gary than he did from Ms. Loftin.²⁵⁵ Mr. Black stated that he spoke with Ms. Loftin the week of February 20, 2012, and she unequivocally told him that she agreed with his analysis and conclusion and that she would send him written confirmation for his file. Mr. Black said when he attended Mr. Gary's going away party that week he considered the matter closed.

²⁵⁵ May 9, 2014 interview with Steve Black (Committee staff notes).

On February 23, 2012, Secretary Salazar had a telephone call with Lewis “Lew” Hay, III, the chairman and CEO of NextEra Energy. In the days leading up to the call, Mr. Black and Ms. Scott prepared a background memorandum for the Secretary that was circulated to other senior officials.²⁵⁶

Earlier on February 23, 2012, Mr. Black had met with Deputy Solicitor for Land Resources Ted Boling to discuss NextEra’s Genesis solar project. “That was a good working lunch. We should do it regularly. Attached is a markup of the (Genesis) memo you sent,” Mr. Boling wrote.²⁵⁷

When asked what occurred after she received the February 6 memorandum, Ms. Loftin did not indicate she had spoken with Mr. Black the week of February 20 or that she had agreed with his analysis or conclusion.²⁵⁸ She was not aware of Mr. Black’s ongoing work on NextEra matters. Instead, Ms. Loftin said she was waiting for further guidance from Mr. Gary.

She said during this time she heard from Solicitor Tompkins that someone approached a Department official (it was unclear if Ms. Tompkins was the official or someone else was asked about Mr. Black’s relationship) at a conference and questioned whether Mr. Black should be working on NextEra matters.²⁵⁹ Ms. Loftin said this actual question from an outside source was what she needed to find that a reasonable person would question Mr. Black’s impartiality and that he should be recused. Once Mr. Gary left the Department at the end of February 2012, replaced by Mr. Keable, Ms. Loftin said she was able to move forward and issue her opinion that Mr. Black should be recused.

Mr. Keable said he also heard a similar story, that Solicitor Tompkins had heard from a senior official who had been approached by someone at a conference asking about Mr. Black’s relationship.²⁶⁰ He said Solicitor Tompkins called both himself and Ms. Loftin into her office – sometime between February 27 and March 6, 2012 – and informed them about the question.

In his interview with Committee staff, Mr. Gary said that when he left the Department at the end of February 2012 he believed Mr. Black’s ethics issue remained unresolved and that he was unaware that someone from outside the Department had approached a Department official with questions about Mr. Black’s involvement with NextEra issues.²⁶¹ He said he learned Mr. Black had in fact recused himself after he left the Department.

²⁵⁶ February 22, 2012 email at 6:33 PM from Steve Black to Robert Abbey, Neil Kornze, Dan Ashe, and David Cottingham, copy to Kenneth Lane, et al., subject: Confidential briefing memo.

²⁵⁷ February 23, 2012 email at 1:29 PM from Ted Boling to Steve Black, subject: RE: Genesis update.

²⁵⁸ February 11, 2014 interview with Melinda Loftin (Committee staff notes).

²⁵⁹ *Id.*

²⁶⁰ February 28, 2014 interview with Ed Keable (Committee staff notes).

²⁶¹ May 27, 2014 interview with Art Gary (Committee staff notes).

Mr. Keable told Committee oversight staff that Mr. Gary had informed him for situational awareness in the fall of 2011 that Mr. Black had approached the Ethics Office, but he did not become personally involved in the matter until after Mr. Gary left and he became Deputy Solicitor on February 27, 2012 and as a result became Ms. Loftin's immediate supervisor.²⁶² Mr. Keable said after reviewing a file Mr. Gary had left for him and discussing the matter with Ms. Loftin, he thought it prudent to bring the matter to closure sooner rather than later. Mr. Keable said the facts surrounding Mr. Black's relationship changed over time and it was unclear to him whether Ms. Loftin had previously concluded Mr. Black needed to recuse himself.

After receiving direction from Mr. Keable, Ms. Loftin and Deputy Designated Agency Ethics Official Richard Grant began preparing an ethics opinion for Mr. Black. The Department has provided the Committee emails sent that Ms. Loftin and Mr. Grant sent each other on March 5 and March 6, 2012, transmitting drafts of the ethics opinion and then discussing Ms. Tompkins interest in reviewing the draft. However, the Department redacted the draft opinions attached to the emails.²⁶³

The final two-page memorandum from Ms. Loftin to Mr. Black is dated March 6, 2012 and concludes that Mr. Black did not have a "covered relationship" with Ms. Yamout and as a result did not violate the criminal provision of 18 U.S.C. § 208. However, Ms. Loftin advised Mr. Black to recuse himself from particular matters involving NextEra "given that, based on the facts, a reasonable person would question your impartiality."

A key issue discussed in the memorandum is how Mr. Black's relationship and ongoing work on NextEra matters would be viewed from outside the Department:

Recently, an outside source has approached a senior Department official expressing concern with an appearance of a conflict of interest given your relationship and official responsibilities. There is also evidence that this NextEra employee has been transferred from California to Washington D.C. following a dinner you had with NextEra executives. Moreover, you work on high profile matters involving renewable energy projects, and as is the case in most such matters, there is strict scrutiny from multiple sources including Congress and the media.

The memorandum ends with a discussion about the role of lobbyists and advises that Mr. Black should recuse himself to avoid any question about his impartiality:

²⁶² February 28, 2014 interview with Ed Keable (Committee staff notes).

²⁶³ See March 6, 2012 email from Richard Grant to Melinda Loftin, subject: Hillary [sic].

... You state that the person with whom you are in a relationship has agreed not to lobby you or the Department of the Interior while you are in a relationship which suggests that she is a registered lobbyist. However, the Department does not manage this person and cannot rely on this commitment from an external source in the management of its ethics program. As the Secretary of the Interior's Counselor, you are focused on the Secretary's renewable energy priorities and have regular dealings with NextEra Energy and NextEra Resources.

Based on the totality of the circumstances it is my opinion that you should recuse yourself from particular matters involving a specific party or parties in which NextEra Energy Inc. and/or NextEra Resources is or represents a party. I am available to assist you in drafting a recusal."

Mr. Black told Committee staff in his interview that he was "surprised" and "taken aback" by Ms. Loftin's advice that he should recuse himself when he met with her and Mr. Keable.²⁶⁴ He said Ms. Loftin admitted that she had changed her mind, that new information had come in (but he did not know the details of it), the relationship had evolved, and that Ms. Loftin now thought it best he recuse himself. Mr. Black said he does not recall receiving a copy of Ms. Loftin's memorandum, just that they discussed her analysis and advice at the meeting.

Recollections differ about Mr. Black's reaction to Ms. Loftin's advice and when he agreed to recuse himself.²⁶⁵ Ms. Loftin told Committee staff that Mr. Black disagreed and said he did not need to recuse himself, but he later did agree to recuse

himself. Mr. Keable told Committee staff that he recalled Mr. Black agreed to recuse himself at that meeting. Mr. Black said he told Ms. Loftin and Mr. Keable that he wanted to sleep on the advice that night and he followed up the next day and agreed to recuse himself.

NextEra attorney and Steve Black friend aware of recusal

From: Black, Steve
Sent: Thursday, March 08, 2012 1:44 PM
To: Donaldson, Milford
Cc: 'jfowler@achp.gov'; Scott, Janea
Subject: RE: Genesis

Thanks Wayne. I have decided to recuse myself from specific matters pending before the Department in which NextEra Energy Inc. or its subsidiary, NextEra Energy Resources ("NextEra"), is a party, including Genesis. Doug's partner, Andy Spielman, advised Doug of that fact before our meeting, so we did not discuss Genesis yesterday.

I have copied my Deputy, Janea Scott, who together with BLM will handle this matter for the Secretary's Office. Thanks as always for your assistance.

Steve

-----Original Message-----

From: Donaldson, Milford [<mailto:mwdonaldson@parks.ca.gov>]
Sent: Thursday, March 08, 2012 9:33 AM
To: Black, Steve
Cc: 'jfowler@achp.gov'
Subject: Genesis

Hi Steve

Spoke with Doug Wheeler yesterday and he said he was going to discuss Genesis with you. My office (Susan and Dwight) has been asked by BLM to visit the site next Wednesday to offer advice on getting this project moving forward.

If you would like to discuss Genesis please let me know. On the hill today, have some time tomorrow. Wayne

In its July 3, 2013 letter, the Department stated Mr. Black orally recused himself on March 8, 2012 and since then has provided copies of emails documenting Mr. Black informing his colleagues about his recusal from NextEra matters.²⁶⁶ The email Mr. Black sent to colleagues in BLM the afternoon of March 8 directed them to work with Ms. Scott or Mr. Kornze on particular matters involving NextEra. It said the recusal would not apply to matters of general applicability, such as the solar PEIS or the DRECP, or matters that affect the industry as a whole.

The Committee has also received an email chain, also dated March 8, 2012, indicating Mr. Black previously informed his friend and NextEra's attorney Mr.

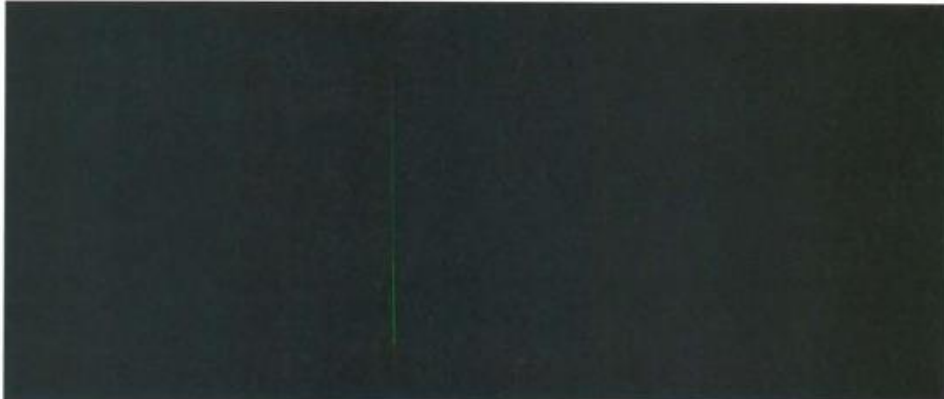
²⁶⁶ See March 8, 2012 email at 2:19 PM from Steve Black to James Kenna, copy to Thomas Pogacnik, Janea Scott, and Neil Kornze, subject: Recusal.

Spielman, about his recusal and that he avoided discussing NextEra's Genesis project at a meeting the day before.²⁶⁷

Report to Secretary Sent Same Day As Recusal

Weekly Report to the Secretary
Counselor to the Secretary
March 8, 2012

I. Personal Message to the Secretary



II. Highlights of Travel, Meetings, Speeches, and other Public Events



III. Expected Legislative, Legal, and Policy Issues

URGENT ISSUES REQUIRING HIGH-LEVEL ATTENTION OR RESOLUTION

NextEra's 250 MW Genesis Solar Project

On Tuesday, a small team of us (David Hayes, Bob Abbey, Neil Kornze, Janea and I) met with NextEra's President, Armando Pimentel, and Executive Vice President of Federal Regulatory Affairs, Joe Kelliher. It has been challenging to navigate through the procedures that were put in place to address unanticipated discoveries of cultural artifacts at the project site. However, the controlled grading plan for the Genesis project was completed about two weeks ago, BLM issued a Notice to Proceed for the grading, and the grading itself is essentially complete. Based on the results of the controlled grading, BLM anticipates being in a position to issue a Notice to Proceed with construction in several areas of the project where no additional artifacts were found by Monday March 12th. California BLM will meet with NextEra early next week to discuss the next steps and timelines regarding the portions of the site where additional artifacts were found. State Director Jim Kenna will also consult with the Colorado River Indian Tribes.

The same day, March 8, Mr. Black submitted his weekly report to Secretary Salazar. The copy provided by the Department is heavily redacted, including a

²⁶⁷ March 8, 2012 email at 1:44 PM from Steve Black to Milford Donaldson [State of California], jfowler@achp.gov, and Janea Scott, subject: RE: Genesis. The email also states, "I have copied my Deputy, Janea Scott, who together with BLM will handle this matter for the Secretary's Office."

section labeled “Personal Message to the Secretary,” but one paragraph discussing NextEra was not redacted, which reads in part: ?????

There is no mention in the unredacted paragraph provided by the Department that Mr. Black had recused himself from NextEra matters that same day.

Later in the month, Mr. Black informed two senior Department policy officials about his recusal as part of a broader discussion about an upcoming trip Secretary Salazar was planning to take California for a tribal meeting. The majority of the email chain has been redacted, but it appears one of the policy advisors brought up the Genesis project, prompting Mr. Black to write, “Thanks, Bob. I appreciate your wise counsel. As an FYI, I have decided to recuse myself from NextEra projects (effective earlier this month), including Genesis. While your mention of the project below is very general and part of a broader point about our ongoing discussions with the tribes in connection with the DRECP, you should refrain from discussing the specifics of the project with me going forward. Jim knows this, so if the subject comes up during the tribal meeting I’ll leave the room.”²⁶⁸

Sudden Urgency to Get Recusal Signed

After Mr. Black agreed to recuse himself, Ms. Loftin and her staff began drafting a formal recusal memorandum for Mr. Black to consider.

Mr. Black was on leave the following week when he was contacted about signing the recusal memorandum. The Ethics Office sent Mr. Black a draft recusal memorandum late in the day on Thursday, March 15, 2012, and asked him to “sign this recusal immediately and have it [emailed] back to both Melinda and myself” and to bring the signed original when he returned to the office.²⁶⁹ Mr. Black replied he was on personal leave and said, “[f]or the record, I advised BLM and other relevant parties of my recusal effective after our phone conversation one week ago. However, I believe we agreed Janea would continue to handle affected matters for the Secretary’s Office. That should be clarified in your memo.”²⁷⁰ He asked that Ms. Loftin call to discuss.

Mr. Black then forwarded his response to Solicitor Tompkins, saying that he “would appreciate your help with this. I’ll be back in the office Monday and could meet then if you’re available.”²⁷¹

²⁶⁸ March 22, 2012 email at 10:03 AM from Steve Black to Robert Laidlaw, copy to Joel Clement, subject: RE: Tribal meeting.

²⁶⁹ March 15, 2012 email at 5:39 PM from Margaret Bradley to Steve Black, copy to Melinda Loftin, no subject.

²⁷⁰ March 15, 2012 email at 5:56 PM from Steve Black to Margaret Bradley, copy to Melinda Loftin, no subject.

²⁷¹ March 15, 2012 email at 6:16 PM from Steve Black to Hilary Tompkins, subject: FW.

Mr. Keable followed up with Mr. Black later that night with a revised draft recusal memorandum, saying, "Please sign and date this document and return it to Melinda electronically, today if possible. . . . You can hand-carry the original signed document to Melinda when you return to the office."²⁷²

Mr. Black responded minutes later, saying, "As I said earlier, I'm on leave and do not have access to a printer or scanner, but I'll sign and return this as soon as possible. I consider the recusal to be in effect from last week."²⁷³

Mr. Black told Committee oversight staff that he disagreed with how the recusal memorandum was originally drafted, saying that it characterized his relationship as a prohibited conflict of interest when, in his view, it was only an appearance of impartiality. He said the draft appeared to be boilerplate and was not tailored to his circumstances, so he refused to sign it until it was revised. He said he spoke with Deputy Chief of Staff Matt Lee-Ashley about his concerns and then Solicitor Tompkins called him and said Mr. Keable and Ms. Loftin would send him a revised memorandum to sign.

The Department has redacted early drafts of the recusal memorandum from the emails it has provided to the Committee; however, it has provided a clean copy of the version sent to Mr. Black the evening of March 15, 2012, as well as a version edited, according to the Department, by Chief of Staff Laura Davis (below). This version does not describe Mr. Black's relationship as a conflict of interest as Mr. Black had described.

²⁷² March 15, 2012 email at 9:06 PM from Ed Keable to Steve Black, copy to Melinda Loftin, no subject.

²⁷³ March 15, 2012 email at 9:16 PM from Steve Black to Ed Keable, copy to Melinda Loftin, no subject.

Edits to Draft Recusal for Steve Black

Steve is arguing & refusing to sign - per Ed & Melinda, about who gets recused matters.

To: Matt Lee-Ashley, Deputy Chief of Staff
Designated Agency Ethics Official and Director, Ethics Office

From: Steve Black, Senior Counselor to the Secretary

Subject: Ethics Recusal

reconfirm
The purpose of this memorandum is to inform you of my recusal from certain matters under 5 C.F.R. § 2635.502, which was entered into last on March 8, 2012, with DOJ OEO

I have a close personal relationship with an employee of NextEra Energy Inc., the parent company of NextEra Energy Resources. NextEra Resources has business pending before the Department of the Interior (DOI). In order to avoid any possible appearance of a loss of impartiality as a result of this relationship, I will not participate in any particular matter involving specific parties in which NextEra Energy Inc. or NextEra Energy Resources is a party or represents a party, unless I am first authorized to participate pursuant to 5 CFR § 2635.502(d). The term particular matter involving specific parties typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. 5 C.F.R. § 2640.102(1). Examples of particular matters involving specific parties include contracts, grants, licenses, right-of-way applications, investigations, and litigation.

The matters covered by this recusal are not to be referred to me and are to be resolved without my participation. Matters from which I am recused will be appropriately delegated to Neil Kornze for handling. Anyone having a question about my recusal should bring the matter to the attention of Janice Scott.

Sincerely,

Steve Black

cc: Solicitor
Chief of Staff
Janice Scott
Neil Kornze

*They must go to Neil:
① He Steve supervises Janice
② Janice has a personal friendship w/ same woman - they have travelled together on personal travel*

The next morning, Ms. Loftin sent Mr. Black an email with “the latest recusal for you to sign. This confirms your verbal recusal last week. Please sign and return to me as soon as you can.”²⁷⁴ Mr. Black responded the afternoon of March 16, 2012 and sent a signed copy of the recusal memorandum to Ms. Loftin.²⁷⁵

The copy of the signed recusal memorandum provided by the Department is undated but confirms the recusal was entered into on March 8, 2012. It characterizes the basis for the recusal as avoiding the appearance of impartiality, not a covered relationship or conflict of interest. It states that matters from which

²⁷⁴ March 16, 2102 email at 11:53 AM from Melina Loftin to Steve Black, subject: Recusal.

²⁷⁵ March 16, 2012 email at 1:27 PM from Steve Black to Melinda Loftin, copy to Ed Keable, subject: RE: Recusal.

Mr. Black will be recused will be delegated to Mr. Kornze and does not reference Ms. Scott. (See below)

In an interview with Committee staff, Mr. Kornze said he did not know why he was selected as the point of contact for Mr. Black's recusal and that he had not been consulted in advance.²⁷⁶ He said he recalled Mr. Black pulling him aside after a meeting to inform him about his recusal and that it was "news" to him that he had been identified as the go-to person for NextEra matters when he saw the written recusal for the first time.²⁷⁷

Steve Black's Signed Undated Recusal

To: Matt Lee-Ashley, Deputy Chief of Staff
Melinda Loftin, Designated Agency Ethics Official and Director, Ethics Office

From: Steve Black, Senior Counselor to the Secretary

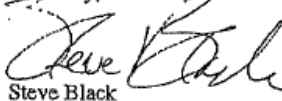
Subject: Ethics Recusal

The purpose of this memorandum is to confirm my recusal from certain matters under 5 C.F.R. § 2635.502, which was entered into on Thursday, March 8, 2012 with the Department of the Interior, Departmental Ethics Office.

I have a close personal relationship with an employee of NextEra Energy Inc., the parent company of NextEra Energy Resources. NextEra Resources has business pending before the Department of the Interior (DOI). In order to avoid any possible appearance of a loss of impartiality as a result of this relationship, I will not participate in any particular matter involving specific parties in which NextEra Energy Inc. or NextEra Energy Resources is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d). The term particular matter involving specific parties typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. 5 C.F.R. § 2640.102(1). Examples of particular matters involving specific parties includes contracts, grants, licenses, rights-of-way applications, investigations, and litigation.

The matters covered by this recusal are not to be referred to me and are to be resolved without my participation. Matters from which I am recused will be appropriately delegated to Neil Kornze for handling.

Sincerely,



Steve Black

cc: Solicitor
Chief of Staff
Neil Kornze

²⁷⁶ May 22, 2014 interview with Neil Kornze (Committee staff notes).

²⁷⁷ *Id.*

Later that day, Ms. Loftin forwarded the signed recusal to Chief of Staff Davis and Deputy Chief of Staff Lee-Ashley.²⁷⁸

On March 17, 2012, the *Los Angeles Times* published its article about Mr. Black's recusal.

Ms. Loftin said she did not know whether the article played any role in the timing of Mr. Black agreeing to sign the written recusal. She said she was working on the recusal before the article, although she was contacted by the Department's Press Office for information so they could have a statement ready when the article was published.

Asked what role the *Los Angeles Times* article had in the timing and decision to have Mr. Black memorialize his recusal, Mr. Keable said he had already determined that, although not required, Mr. Black's recusal should be in writing. Mr. Keable said he was frustrated with Mr. Black leaving on vacation without signing a recusal memorandum, and that the publication of the *Los Angeles Times* article confirmed to him that Mr. Black's recusal was the right thing to do.

Recusal Issued for Second Renewable Energy Advisor

On March 17, 2012, Ms. Yamout forwarded *Los Angeles Times* article to Ms. Scott's personal email account, writing, "Hey! Thought you might want to see the below ..." ²⁷⁹

Mr. Black's was not the only recusal issued by a senior Department official concerning NextEra and Ms. Yamout. According to Ms. Loftin and Mr. Keable, other Department officials including Chief of Staff Davis became concerned that Ms. Scott's friendship with Ms. Yamout raised a similar question of impartiality. Ms. Scott and Ms. Yamout had socialized and vacationed together going back to 2010, a year before Mr. Black became romantically involved with Ms. Yamout.

The Department has provided a draft of Mr. Black's recusal containing handwritten comments that have been identified as belonging to Chief of Staff Davis. The comments discuss how Ms. Scott is not an appropriate point of contact for NextEra matters: "They must go to Neil: (1) b/c Steve supervises Janea [and] (2) Janea has a personal friendship [with the] same woman. They have travelled together on personal travel."

Although Mr. Black said he resisted signing the recusal memorandum because he said it characterized his relationship as a conflict of interest, Mr. Keable

²⁷⁸ March 16, 2012 email at 3:29 PM from Melinda Loftin to Laura Davis and Matt Lee-Ashley, subject: FW: Recusal.

²⁷⁹ March 17, 2012 email at 2:41 AM from Ms. Yamout [personal email] to Janea Scott [personal email], subject: Fwd: just hit...

and Ms. Loftin had a different understanding of the basis for Mr. Black's objections. They said Mr. Black initially objected to signing the recusal memorandum because he wanted Ms. Scott to serve as the point of contact for NextEra matters. Mr. Keable and Ms. Loftin said Mr. Black did not see an appearance of impartiality given that Ms. Scott was his subordinate and she had a personal friendship with Ms. Yamout, not a romantic relationship. Ms. Loftin advised Ms. Scott that she too should recuse herself from particular matters involving NextEra.²⁸⁰

Mr. Black characterized the Department's concerns about Ms. Scott, in an interview with Committee staff, as an "extreme position" and that there was no basis in the ethics regulations to justify the decision that she should recuse herself.²⁸¹ Knowing of the personal relationship between Ms. Scott and Ms. Yamout and the small number of staff in Mr. Black's office, Ms. Loftin said she thought it would be best practice to not have Mr. Black's NextEra matters reassigned to Ms. Scott and that Ms. Scott also be recused.²⁸² Ms. Loftin said Ms. Scott also fought the recusal and elevated the issue to the Solicitor, who supported Ms. Loftin's advice.²⁸³

In the days following the *Los Angeles Times* article, Ms. Loftin worked on developing a recusal memorandum for Ms. Scott, but it took several drafts and more than a week before Ms. Scott would sign her recusal.

On Monday, March 19, 2012, Ms. Scott inquired with the Ethics Office into the status of the recusal, writing, "I am getting questions and it would be very helpful for me to have a draft of the recusal letter to review before I head home today. I've also got a few follow up questions for you. May we meet tomorrow? I am available between 10 and 1. Thank you for your help."²⁸⁴ Ms. Loftin responded a few minutes later to say a draft was ready for her to pick up.²⁸⁵

The next day, Tuesday, March 20, 2012, Ms. Scott sent an email requesting to meet with Ms. Loftin.²⁸⁶ It is unclear from the documents provided by the Department if or when the two met. That afternoon, Ms. Loftin sent one of her deputies a draft of Ms. Scott's recusal memorandum.²⁸⁷ The deputy sent a revised version back to Ms. Loftin less than 30 minutes later,²⁸⁸ which she then sent to Ms.

²⁸⁰ February 11, 2014 interview with Melinda Loftin (Committee staff notes); February 28, 2014 interview with Edward Keable (Committee staff notes).

²⁸¹ May 9, 2014 interview with Steve Black (Committee staff notes).

²⁸² February 11, 2014 interview with Melinda Loftin (Committee staff notes).

²⁸³ *Id.*

²⁸⁴ March 19, 2012 email at 5:04 PM from Janea Scott to Melinda Loftin, Margaret Bradley, and Matt Lee-Ashley, subject: Recusal.

²⁸⁵ March 19, 2012 email at 5:06 PM from Melinda Loftin to Janea Scott, Margaret Bradley, and Matt Lee-Ashley, subject: RE: Recusal.

²⁸⁶ March 20, 2012 email at 9:49 AM from Janea Scott to Melinda Loftin, subject: Please let me know when you have time to meet this morning.

²⁸⁷ March 20, 2012 email at 12:11 PM from Melinda Loftin to Edward McDonnell, no subject.

²⁸⁸ March 20, 2012 email at 12:34 PM from Edward McDonnell to Melinda Loftin, no subject.

Scott for her signature.²⁸⁹ Ms. Scott did not sign this version, or a second draft sent to her the next day, Wednesday, March 21, 2012.²⁹⁰ Instead, she asked to meet with Ms. Loftin to discuss the recusal²⁹¹ and copied Mr. Keable on a follow-up email the next day.²⁹² The draft recusals have been redacted from the documents provided by the Department.

Janea Scott's Signed Undated Recusal

To: Matt Lee-Ashley, Deputy Chief of Staff
Melinda Loftin, Designated Agency Ethics Official and Director, Ethics Office
From: Janea Scott, Deputy Counselor for Renewable Energy
Subject: Ethics Recusal

The purpose of this memorandum is to confirm my voluntary recusal from certain matters involving NextEra Energy, Inc. and NextEra Energy Resources, entered into on Friday, March 16, 2012, with the Department of the Interior, Departmental Ethics Office.

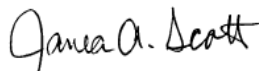
My immediate supervisor has a close personal relationship with an employee of NextEra Energy, Inc., the parent company of NextEra Energy Resources, and has recused himself from certain matters involving NextEra Energy, Inc. and NextEra Energy Resources. I am acquainted with this same employee.

The nature of my relationship with this employee does not create a statutory conflict of interest under 18 U.S.C. § 208. Nor does it create an appearance of a lack of impartiality under 5 C.F.R. § 2635.502, as I do not have a covered relationship with the employee under 5 C.F.R. § 2635.502(b) and because the nature of our relationship would not cause a reasonable person with knowledge of the relevant facts to question my impartiality in matters involving either NextEra Energy, Inc. or NextEra Energy Resources.

While I have neither a statutory nor regulatory requirement to recuse myself from matters involving NextEra Energy, Inc. or NextEra Energy Resources, I have chosen, out of an abundance of caution, to voluntarily recuse myself from participating in particular matters involving a specific party or parties in which NextEra Energy, Inc. or NextEra Energy Resources is a party or represents a party.

The matters covered by this elective recusal are not to be referred to me and are to be resolved without my participation. Matters from which I am recused will be appropriately delegated to Neil Kornze, BLM's Acting Deputy Director for Policy and Programs, for handling.

Sincerely,



Janea Scott

Mr. Keable confirmed to Committee staff that Ms. Scott contacted him directly to object to having to recuse herself and he referred her back to Ms.

²⁸⁹ March 20, 2012 email at 12:40 PM from Melinda Loftin to Janea Scott, subject: FW:.

²⁹⁰ March 21, 2012 email at 3:56 PM from Melinda Loftin to Janea Scott, copy to Margaret Bradley, no subject.

²⁹¹ March 21, 2012 email at 5:24 PM from Janea Scott to Melinda Loftin, copy to Margaret Bradley, subject: RE:.

²⁹² March 22, 2012 email at 8:05 AM from Janea Scott to Melinda Loftin, copy to Margaret Bradley and Edward Keable, subject: RE:.

Loftin.²⁹³ He told Committee staff that a friendship between Ms. Scott and Ms. Yamout probably on its own would not justify recusal but the circumstances here also involved Mr. Black as Ms. Scott's supervisor.²⁹⁴ It is unclear from the documents what Ms. Scott's specific concerns were, but on Friday, March 23, 2012, Ms. Scott sent a third version of her draft recusal memorandum to Solicitor Tompkins asking for her review.²⁹⁵ Ten minutes after receiving the draft recusal from Ms. Scott, Solicitor Tompkins sent it to Ms. Loftin without any comment.²⁹⁶ Thirty minutes later, Ms. Loftin sent the draft recusal back to Solicitor Tompkins with "a few edits."²⁹⁷ The Department has redacted a comment in the body of the email sent by Ms. Loftin and text of the draft recusal.

Solicitor Tompkins responded the following Monday, but the Department has redacted a paragraph of text from Ms. Tompkins' email.²⁹⁸ Ms. Loftin responded, "I will take another crack at using some of the language that I prepared in the other drafts and including Janea's concerns of [redacted]."²⁹⁹ Later that day she sent a fourth revision to Solicitor Tompkins,³⁰⁰ who forwarded it on to Ms. Scott along with the disclaimer that the email was "ATTY CLIENT COMMUNICATION – Confidential & Privileged."³⁰¹

²⁹³ February 28, 2014 interview with Edward Keable (Committee staff notes).

²⁹⁴ *Id.*

²⁹⁵ March 23, 2012 email at 3:44 PM from Janea Scott to Hilary Tompkins, subject: Draft.

²⁹⁶ March 23, 2012 email at 3:54 PM from Hilary Tompkins to Melinda Loftin, subject: FW: Draft.

²⁹⁷ March 23, 2013 email at 4:24 PM from Melinda Loftin to Hilary Tompkins, subject: RE: Draft.

²⁹⁸ March 26, 2012 email at 7:22 AM from Hilary Tompkins to Melinda Loftin, subject: RE: Draft.

²⁹⁹ March 26, 2012 email at 10:16 AM from Melinda Loftin to Hilary Tompkins, subject: RE: Draft.

³⁰⁰ March 26, 2012 email at 11:39 AM from Melinda Loftin to Hilary Tompkins, subject: RE: Draft.

³⁰¹ March 26, 2012 email at 2:14 PM from Hilary Tompkins to Janea Scott, subject: recusal draft_4 janea deo3. Although the email from Solicitor Tompkins includes disclaimers that it is protected by attorney-client privilege and is confidential, advice from Departmental ethics attorneys to employees is not considered to be protected by the attorney-client privilege.

Janea Scott Recusal Emails

From: Loftin, Melinda
Sent: Monday, March 26, 2012 10:16 AM
To: Tompkins, Hilary C
Subject: Re: Draft

Hilary, I will take another crack at this using some of the language that I prepared in the other drafts and including Janea's concerns of [REDACTED] Melinda

From: Tompkins, Hilary C
Sent: Monday, March 26, 2012 07:22 AM
To: Loftin, Melinda
Subject: Re: Draft



From: Tompkins, Hilary C
Sent: Monday, March 26, 2012 3:36 PM
To: Loftin, Melinda
Subject: FW: recusal draft_4 janea deo3
Attachments: recusal draft_4 janea deo3.docx

FYI

From: Tompkins, Hilary C
Sent: Monday, March 26, 2012 2:14 PM
To: Scott, Janea
Subject: recusal draft_4 janea deo3

ATTY CLIENT COMMUNICATION – Confidential & Privileged

Here is a proposed redraft. I had Melinda review as well. HT

Ms. Scott signed the recusal later that day and sent it to Ms. Tompkins and Mr. Lee-Ashley.³⁰² A comparison of the redacted draft recusal and the final, signed version indicate at least two paragraphs of new text was added, along with some formatting changed.

The afternoon of Tuesday, March 27, 2012, Ms. Scott sent an email to nine Department officials, including Mr. Kornze, stating, “As a reminder to the oral notification I provided to many of you the week before last, I have voluntarily recused myself from specific matters pending before the Department in which NextEra Energy Inc. or its subsidiary, NextEra Energy Resources (“NextEra”), is a party. This would not include matters of general applicability (e.g., the solar PEIS or the DRECP) or any policies that affect the industry as a whole (e.g., BLM guidance, rent and competitive leasing policies, etc.).”³⁰³ The email did not include a copy of

³⁰² March 26, 2012 email at 5:50 PM from Janea Scott to Hilary Tompkins and Matt Lee-Ashley, subject: Letter.

³⁰³ March 27, 2012 email at 4:13 PM from Janea Scott to Ray Brady, et al, copy to Neil Kornze, subject: Recusal.

the recusal memorandum and was not sent to any of Ms. Scott's supervisors, including Mr. Black. Mr. Kornze forwarded the email to BLM Director Abbey and another senior BLM official with the comment, "FYI. Janea is recusing herself as well."³⁰⁴

Implementation of Recusals

In the days following Ms. Scott's recusal, a senior manager in the Solicitor's Office sent an email about the development of the solar PEIS to Ms. Loftin saying he had been "asked to bring you up to speed."³⁰⁵ Ms. Loftin replied two days later, March 30, 2012, writing, "I just met with Ed [Keable] and apparently the issue is whether Steve [Black] and Janea can work on this matter."³⁰⁶

The first week of April 2012, Mr. Keable sent an email to the Ethics Office inquiring about their analysis of the solar PEIS issue: "I understand Ted Boling has forwarded information about the Solar PEIS to help facilitate a determination of whether Steve Black and Janea Scott can work on this matter. Where are you on your analysis? Do you need any more information? We should close the loop on this as promptly as we can as this is an important and timely manner."³⁰⁷

Deputy Ethics Official McDonnell responded, "On the solar PEIS, I've done an initial review of the PEIS and the Supplement. ... The only issue I've noted so far that might implicate the recusals is whether certain pending solar applications (including some of NextEra's) should be included in the Supplement and the PEIS."³⁰⁸ Deputy Solicitor Keable sent another email the following week, reiterating, "Solar PEIS. We need to complete the analysis and drafting of a memo addressing the extent to which Steve and Janea can work on this matter."³⁰⁹ The following week, ethics officials sent a series of emails discussing this issue, but the Department has redacted the content of the emails.³¹⁰ The Department has also provided notes from Mr. McDonnell, the deputy ethics official, but they are completely redacted.

³⁰⁴ March 27, 2012 email at 4:44 PM from Janea Scott to Robert Abbey and Michael Pool, subject: Recusal.

³⁰⁵ March 28, 2012 email at 1:42 PM from Ted Boling to Melinda Loftin, subject: Solar PEIS.

³⁰⁶ March 30, 2012 email at 6:15 PM from Melinda Loftin to Ted Boling and Edward McDonnell, subject: RE: Solar PEIS.

³⁰⁷ April 3, 2012 email at 2:51 PM from Edward Keable to Edward McDonnell and Richard Grant, copy to Melinda Loftin, subject: Ethics Follow-up.

³⁰⁸ April 3, 2012 email at 3:40 PM from Edward McDonnell to Edward Keable, copy to Melinda Loftin and Richard Grant, subject: ER Ethics Follow-up.

³⁰⁹ April 10, 2012 email at 2:58 PM from Edward Keable to Richard Grant and Edward McDonnell, copy to Melinda Loftin, subject: Ethics Office Action Items.

³¹⁰ See April 13, 2012 email at 12:54 PM from Ted Boling to Edward McDonnell, Gregory Russell, and Melinda Loftin, copy to Richard Grant and Edward Keable, subject: RE: Draft Steve Black Recusal – SPEIS.

On April 17, 2012, the Ethics Office issued separate ethics opinions to Mr. Black and Ms. Scott within minutes of each other that only differed in how they described Mr. Black's and Ms. Scott's respective recusals.³¹¹ The opinions were not sent to anyone in Mr. Black's or Ms. Scott's supervisors or management chain. For Mr. Black's, the Ethics Office wrote, "You have recused yourself from participation in any particular matter involving specific parties in which NextEra Energy, Inc. or NextEra Resources is a party or represents a party, unless first authorized to participate pursuant to 5 C.F.R. § 2635.502(d)." For Ms. Scott's opinion, the Ethics Office characterized her recusal as voluntary: "You have voluntarily recused yourself from particular matters involving a specific party or parties in which NextEra Energy, Inc. or NextEra Resources is a party or represents a party."

Otherwise, the ethics opinions were nearly identical and allowed them to work on the solar Programmatic Environmental Impact Statement, subject to certain conditions:

The solar PEIS itself is not a particular matter involving a specific party or parties (specific party matter). Accordingly, you are not recused from participating in the PEIS process generally. However, you may not participate in any solar PEIS-related process that uniquely affects a specific party matter in which NextEra Energy, Inc. or NextEra Resources is or represents a party. For example, you may not participate in determining whether a particular NextEra Energy, Inc. or NextEra Resources application should be included as a pending solar application in Appendix A or the Supplement, as that would uniquely affect that particular application. You may, however, participate in establishing evaluation criteria that will apply to all pending solar applications, even if a NextEra application is a member of that class of pending applications.

Two days after receiving clearance from the Ethics Office, Ms. Scott sent Mr. Black a draft memorandum for upcoming meetings on the solar PEIS and the DRECP.³¹² The Department has redacted the draft memorandum from Ms. Scott, as well as Mr. Black's edits sent five days later.³¹³ Ms. Scott sent the final version to Ken Lane in the Secretary's Office later that day.³¹⁴

³¹¹ April 17, 2012 email at 2:33 PM from Edward McDonnell to Steve Black, copy sent to Melinda Loftin, Edward Keable, Ted Boling, and Gregory Russell, subject: Application of your recusal to the Solar PEIS Process; April 17, 2012 email at 2:36 PM from Edward McDonnell to Janea Scott, copy sent to Melinda Loftin, Edward Keable, Ted Boling, and Gregory Russell, subject: Application of your recusal to the Solar PEIS Process.

³¹² April 19, 2012 email at 3:46 PM from Janea Scott to Steve Black, subject: DRAFT Info Memo on Solar PEIS.

³¹³ April 24, 2012 email at 12:06 PM from Steve Black to Janea Scott, subject: RE: DRAFT Info Memo on Solar PEIS.

³¹⁴ April 24, 2012 email at 12:31 PM from Janea Scott to Kenneth Lane, copy to Steve Black and Jason Fink, subject: For your approval: Info Memo for the Secretary.

The final Solar PEIS was issued in July 2012 and identified 17 Solar Energy Zones representing 285,000 acres of federal land. Of the 16 approved solar projects that had received listed in an appendix to the PEIS, four were NextEra projects.³¹⁵ NextEra also had three projects, including the McCoy solar project in California, listed in the PEIS as “first-in-line” pending solar applications.³¹⁶ Secretary Salazar approved the record of decision for the final Solar PEIS on October 12, 2012.³¹⁷

Although the Department has provided documents showing Mr. Black and Ms. Scott informing their colleagues about the recusals, the topic of their recusal often came up in response to emails being sent to them with information about a NextEra project or asking that they weigh in on a particular matter.³¹⁸ It is also unclear the extent to which other officials working with Mr. Black or Ms. Scott on matters of general applicability knew of their NextEra recusals. For example, the Department has provided several December 2013 email exchanges involving Fish and Wildlife Service employees commenting on a draft memorandum prepared by Mr. Black on eagle issues. The emails suggest the FWS staff were sending information about the McCoy solar project as part of their comments to Mr. Black.³¹⁹

It appears that Mr. Black’s and Ms. Scott’s recusals were not widely known throughout the Department, and that both line staff working on these projects and senior officials interacting with Mr. Black and Ms. Scott may not have known to stay

³¹⁵ Blythe Solar Power Project (Solar Millennium listed as Developer but was actually a NextEra project by June 2012); Genesis Solar Energy Project (Solar Millennium listed as Developer but was actually a NextEra project); Desert Sunlight Solar Farm (First Solar Development, Inc. listed as Developer but was sold to NextEra in September 2011); and Sonoran Solar Project (NextEra). U.S. Bureau of Land Management, *Final Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development in Six Southwestern States*, July 2012, at Table B-1, available at http://solareis.anl.gov/documents/fpeis/Solar_FPEIS_Volume_6_Part_1.pdf.

³¹⁶ See U.S. Bureau of Land Management, *Final Programmatic Environmental Impact Statement (PEIS) for Solar Energy Development in Six Southwestern States*, July 2012, at Table B-2 http://solareis.anl.gov/documents/fpeis/Solar_FPEIS_Volume_6_Part_1.pdf.

³¹⁷ See U.S. Bureau of Land Management, *Obama Administration Approves Roadmap for Utility-Scale Solar Energy Development on Public Lands*, Oct. 12, 2012, available at http://www.blm.gov/wo/st/en/info/newsroom/2012/october/NR_10_12_2012.html.

³¹⁸ May 14, 2012 email at 3:44 PM from Ted Boling to Janea Scott, copy to Steve Black, subject: North Sky Wind Preliminary Injunction Schedule (“Terribly sorry to have forgotten. I need a list for ready reference.”); September 16, 2012 email at 6:33 PM from Elizabeth Klein to Janea Scott and Neil Kornze, subject: Need some project info (“We’ve been asked for some more detail about current and potential opposition to . . . McCoy solar projects”).

³¹⁹ December 3, 2012 email at 4:58 PM from Alexandra Pitts to David Cottingham and Betsy Hildebrandt, copy to Ashleigh Blackford and Diane Elam, subject: FW: outstanding 2012 project update (“When I received a copy of SB’s draft memorandum to the Secretary, I was particularly concerned about the paragraph referring to outstanding 2012 projects. Below please find the status of these. As you can see, the resolution of many of these is not in Service hands”). The FWS comments were sent to Mr. Black on December 4, 2012 by email from Ms. Hildebrandt. The list includes the McCoy solar project. It is unclear, because the Department has redacted the underlying documents, whether the draft memorandum prepared by Mr. Black included a reference to McCoy or whether the FWS’ comments did.

away from the topic with them. NextEra has also advised that officials at the company did not receive any formal notification from Mr. Black about his recusal and learned of it only through the *Los Angeles Times* article.³²⁰

Work Recusal Impacting Personal Life

The Ethics Office also weighed in on at least two occasions later in 2012 concerning the implementation of Mr. Black's recusal. The first involved whether Mr. Black could attend an event with several renewable energy companies, including NextEra. The Secretary was planning to host a reception at a Martina McBride concert at Wolf Trap National Park for the Performing Arts on June 13, 2012. The Ethics Office flagged the issue during its regular review of events for the Secretary, and advised that either Mr. Black or NextEra could be invited – but not both.³²¹

The second matter involved whether Mr. Black could (or should) attend the fall 2012 retreat of the National Republican Senatorial Committee at the Greenbrier resort in West Virginia from September 14 to 16, 2012 as Ms. Yamout's guest.³²² Mr. Black contacted Ms. Loftin and Mr. Keable the afternoon before the event to see whether his attendance would conflict with the ethics rules.³²³ Ms. Loftin responded later that day saying due to election season it was the busiest time of the year for the Ethics Office and asking several follow-up questions about who would be paying for his travel, lodging and meals, as well as the purpose of his attendance.³²⁴ Ms. Loftin also recommended Mr. Black inform Ms. Davis of his interest in attending.

Mr. Black responded three minutes later, apologizing for the lateness of his request and explaining, "I will not register for the event and do not plan to participate in any of the planned events except meals and receptions, as appropriate. I do not expect any out of pocket expenses. I'll send Laura Davis a separate note."³²⁵ Ms. Loftin sent a second message later that night with additional questions about the costs, saying she needed "to research the lobbyist issue and gift rules since NextEra is actually paying for this event, not your girlfriend."³²⁶

³²⁰ December 18, 2013 meeting with NextEra counsel, WilmerHale (Committee staff notes).

³²¹ February 28, 2014 interview with Ed Keable (Committee staff notes); see June 1, 2012 email at 12:03 PM from Jennifer Sisk to Edward Keable and Melinda Loftin, subject: RE: Wolf trap sign-off.

³²² See Anna Palmer and Dave Levinthal, *NRSC Greenbrier retreat to draw K St. crowd - Fundraising doesn't stop on Sept. 11 - Congress, Hill staffers dunk lobbyists - IFA brings in the ground troops*, Politico, Sept. 11, 2012, available at <http://www.politico.com/politicoinfluence/0912/politicoinfluence344.html>.

³²³ September 13, 2012 email at 4:22 PM from Steve Black to Melinda Loftin and Ed Keable, subject: Ethics question.

³²⁴ September 13, 2012 email at 6:33 PM from Melinda Loftin to Ed Keable and Steve Black, copy to Richard Grant, subject: RE Ethics question.

³²⁵ September 13, 2012 email at 6:36 PM from Steve Black to Melinda Loftin and Ed Keable, copy to Richard Grant, subject: RE Ethics question.

³²⁶ September 13, 2012 email at 9:48 PM from Melinda Loftin to Ed Keable and Steve Black, copy to Richard Grant, subject: RE Ethics question.

Mr. Black responded the morning of September 14, writing:

My understanding is that the retreat is included in whatever value NextEra received for an annual contribution to the NRSC. Meals and receptions included. Therefore you may assume NextEra has paid for those already. It may be possible to get an estimate of the cost of meals and receptions, and if appropriate I would be happy to reimburse NextEra for my pro-rata share. To be clear, my girlfriend will not, has not in the past, does not ever use her corporate card to pay for my meals. I expect she'll charge her room to her corporate card, but she would do that with or without me.³²⁷

Deputy Ethics Official Grant answered Mr. Black later that morning that he was prohibited from accepting any gift from NextEra, and as the event and meals and lodging were being paid for indirectly by NextEra, his invitation would be considered a gift from NextEra, not his lobbyist girlfriend. Mr. Black was advised to pay fair market value for his share of the expenses.³²⁸ Mr. Black agreed to request a breakdown of the fair market value and agreed to repay NextEra for any lodging, meals and receptions attended.³²⁹

Separately, Mr. Black sent an email late in the afternoon of September 14 to Chief of Staff Davis and Mr. Lane advising them about his invitation to attend the Greenbrier event as Ms. Yamout's guest and the advice from the Ethics Office.³³⁰ Mr. Lane did not object.³³¹ Chief of Staff Davis was more concerned, writing "At a minimum, I'd suggest the optics are not great in your attending an event such as this. I counsel you to be scrupulously careful in all of your interactions over this weekend event, and please provide the back-up paperwork to Ken Lane that reflects you have properly reimbursed NextEra for the actual or fair market value of meals, receptions and share of the lodging."³³² Ms. Davis then forwarded her message to Deputy Secretary Hayes as an "FYI."³³³

³²⁷ September 14, 2012 email at 10:03 AM from Steve Black to Melinda Loftin and Edward Keable, copy to Richard Grant, subject: RE: Ethics question.

³²⁸ September 14, 2012 email at 11:58 AM from Richard Grant to Steve Black, Melinda Loftin and Edward Keable, subject: RE: Ethics question.

³²⁹ September 14, 2012 email at 1:06 PM from Steve Black to Richard Grant, Melinda Loftin and Edward Keable, subject: RE: Ethics question.

³³⁰ September 14, 2012 email at 1:17 PM from Steve Black to Laura David and Kenneth Lane, copy to Richard Grant, Melinda Loftin and Edward Keable, subject: Weekend personal travel.

³³¹ September 14, 2012 email at [unknown time] from Kenneth Lane to Steve Black and Laura David, copy to Richard Grant, Melinda Loftin and Edward Keable, subject: RE: Weekend personal travel.

³³² September 14, 2012 email at 4:58 PM from Laura Davis to Kenneth Lane and Steve Black, copy to Richard Grant, Melinda Loftin and Edward Keable, subject: RE: Weekend personal travel.

³³³ September 14, 2012 email at 5:10 PM from Laura Davis to David Hayes, subject: RE: Weekend personal travel.

On September 15, 2012, Ms. Loftin sent a follow-up email to Mr. Black, writing, “I thought of one additional item. Depending on how you traveled to the Greenbrier. If you drove and paid for gas – no issue. If the gas was paid for by NextEra please add half of the gas to your expense total.”³³⁴ Mr. Black replied later that day, “Thanks Melinda. I drove my car, so gas will be more than offset by my mileage. But of course I will pay my share of the gas.”³³⁵ The Department has not provided copies of any documentation of Mr. Black reimbursing NextEra.

NextEra’s McCoy Project Approved During Recusal Period

Although NextEra’s Genesis solar and North Sky River wind projects had already been approved, the company’s McCoy project was still awaiting Departmental approval after Mr. Black and Ms. Scott recused themselves. That project, designed to produce up to 750 MW of electricity, was to be located on 7,700 acres of federal land near Blythe, California and needed a right of way from the Bureau of Land Management.³³⁶

In August 2011, the Bureau of Land Management began work on the environmental impact statement for the project, which was finalized in December 2012.³³⁷ Secretary Salazar approved the right of way in March 2013, shortly before he stepped down from leading the Department.

It is not entirely clear from the documents provided by the Department if Mr. Black and Ms. Scott were able to stay entirely clear of the McCoy decision. As explained elsewhere, the Department has provided several examples of Mr. Black responding to the sender of an email that he is recused from NextEra matters and directing them to Mr. Kornze, including for the McCoy project. However, the Committee has also received a number of emails that show the difficulty in maintaining clear separation between Mr. Black and Ms. Scott and the McCoy project in particular.

For example, in December 2012, Mr. Black received a draft of a press release announcing the final environmental impact statement that he reviewed and provided comments on: “There are font issues in several places (see attached), and I would suggest a grammatical fix to David’s quote, but because we are voluntarily

³³⁴ September 15, 2012 email at 12:59 PM from Melinda Loftin to Richard Grant, Steve Black, and Edward Keable, subject: Re: Ethics question.

³³⁵ September 15, 2012 email at 4:59 PM from Steve Black to Melinda Loftin, Richard Grant, and Edward Keable, subject: Re: Ethics question.

³³⁶ See U.S. Bureau of Land Management, McCoy Solar Energy Project, http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/McCoy.html.

³³⁷ U.S. Department of the Interior, *Secretary Salazar Announces Milestone on McCoy Solar Energy Project, Caps Strong Year for Renewable Energy Development on Public Lands*, Dec. 12, 2012, available at <http://www.doi.gov/news/pressreleases/secretary-salazar-announces-milestone-on-mccoy-solar-energy-project-caps-strong-year-for-renewable-energy-development-on-public-lands.cfm>.

recused from McCoy I did not make substantive edits.”³³⁸ In February 2013, Ms. Scott³³⁹ sent a memorandum to the Secretary advising him of upcoming decisions that needed to be made for renewable energy project, including the McCoy project. The entry for the McCoy project noted that Ms. Scott and Mr. Black were recused and additional information would come from BLM.³⁴⁰ These emails suggest Mr. Black and Ms. Scott were diligent in documenting their recusal, as they continued to be included in broader discussions and be kept aware of timeframes affecting McCoy.

In contrast, one memorandum that was received suggests their roles might have been more substantive.³⁴¹ In his March 7, 2013 memorandum to the Secretary, Mr. Black wrote:

³³⁸ December 20, 2012 email at 1:00 PM from Steve Black to Katherine Kelly, copy to Janea Scott, subject: Re: Draft release for quick review.

³³⁹ On February 11, 2013, California Governor Jerry Brown announced that he had appointed Ms. Scott to serve on the California Energy Commission. See California Office of the Governor, *Governor Brown Announces Appointments*, Feb. 11, 2013, available at <http://gov.ca.gov/news.php?id=17922>.

³⁴⁰ February 15, 2013 email at 1:10 PM from Janea Scott to [daily briefing book email address], Jennifer Sisk, and Nan Efua Embil, copy to Steve Black and Kenneth Lane, subject: Briefing memo for the Renewable Energy meeting, email 1 or 2.

³⁴¹ March 7, 2013 email at 5:50 PM from Steve Black to [weekly reports email address] and James Anderson, copy to Janea Scott, Neal Kemkar, Ruchi Sadhir, and Scott Haase, subject: Weekly Report.

Weekly Report Mentions Involvement in McCoy Record of Decision

Weekly Report to the Secretary
Counselor to the Secretary
March 7, 2013

I. Personal Message to the Secretary



RENEWABLE ENERGY UPDATES

Renewable Energy Priority & Active Projects

Janea and I are working with your renewable energy team to shepherd three records of decision to completion—

and NextEra's McCoy Solar project. We anticipate that you will receive these RODs on Monday or Tuesday and if you choose to approve them, you will sign them at an event with Governor Brown in California on Wednesday March 13th. Nevada BLM may also have a connected action solar project, being signed in Nevada, on that same day. Janea is working with BLM and the comms team to determine whether we should wrap that project into the Wednesday March 13th announcement.

It is unclear why, considering his and Ms. Scott's recusals, Mr. Black would have characterized their role as shepherding the McCoy project through the approval process. Unlike other emails and memoranda, this one does not indicate that Mr. Black and Ms. Scott were recused from NextEra matters. Mr. Black and Ms. Scott also helped to prepare Secretary Salazar for the California trip where the record of decision for the right of way was signed. On March 11, 2013, Mr. Black circulated a memorandum drafted by Ms. Scott to BLM officials with information about the California trip.³⁴² The memorandum includes basic information about the McCoy project and details about the event. From this memorandum the Department has redacted several sections, which appear to concern side meetings the Secretary was to have, including one with Governor Brown and another with stakeholders and the REPG to discuss renewable energy issues. This memorandum also does not say that Mr. Black and Ms. Scott were recused from NextEra matters.

³⁴² March 11, 2013 email at 6:22 PM from Steve Black to Jim Kenna and Tom Pogacnik, copy to Janea Scott, subject: Event memo for Wednesday.

Mr. Black traveled with Secretary Salazar to attend the events with Governor Brown. Photographs show him attending both the signing ceremony for the McCoy project, and the side meeting between the Secretary and the Governor.

McCoy Signing Ceremony



Steve Black shown second row, third from right

In an interview with Committee staff, Mr. Black admitted he attended the signing ceremony but denied having any substantive involvement in the McCoy decision.³⁴³ He said because of his role working on the DRECP he was staffing the Secretary for the meeting with the Governor.³⁴⁴ Although he attended the signing ceremony, Mr. Black said he informed BLM's communications office about his recusal and the staff there prepared the Secretary's talking points for the ceremony. Mr. Black said he did not recall consulting with the Ethics Office about whether attending the event would be consistent with his recusal.³⁴⁵ DOI's press release for the signing ceremony shows Mr. Black attending a meeting with Secretary Salazar and Governor Brown.³⁴⁶

Mr. Keable told Committee staff that after the event in California, Ms. Loftin showed him a photograph of Mr. Black in attendance at the event.³⁴⁷

³⁴³ May 9, 2014 interview with Steve Black (Committee staff notes).

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ U.S. Department of the Interior, *Secretary Salazar Approves Three Renewable Energy Projects in California and Nevada*, March 13, 2013, available at <http://www.doi.gov/news/pressreleases/secretary-salazar-approves-three-renewable-energy-projects-in-california-and-nevada.cfm>.

³⁴⁷ February 28, 2014 interview with Edward Keable (Committee staff notes).

Mr. Keable said he didn't know if Mr. Black had consulted the Ethics Office prior to attending the signing ceremony, but in his opinion Mr. Black should not have attended it.³⁴⁸

Meeting with Secretary Salazar and Governor Brown



Steve Black shown sitting, second from left

In an interview with Committee staff, Mr. Black said he would not do anything differently but that he did not think he or Ms. Scott were well served by the Ethics Office and that a well-functioning ethics program should be able to provide advice in a timely manner.³⁴⁹ Mr. Black resigned from the Department in May 2013. He works at a law firm based in San Francisco and Washington, D.C.³⁵⁰

Asked if he would do anything differently, Mr. Keable said he thinks people did the right thing but perhaps he would have come to a decision sooner, adding he was not in Ms. Loftin's or Mr. Gary's shoes.³⁵¹ In response to the same question, Ms. Loftin said maybe she could have been more demanding of her supervisors to provide timely responses.³⁵²

³⁴⁸ *Id.* Although travel records provided by the Department indicate the Ethics Office was consulted about certain aspects of this trip, such as the Secretary's ability to attend certain events, the records do not indicate the Ethics Office was consulted about Mr. Black's attendance at the signing ceremony.

³⁴⁹ May 9, 2014 interview with Steve Black (Committee staff notes).

³⁵⁰ See Bingham McCutchen, *Steve W. Black*, <http://www.bingham.com/People/Black-Steve>.

³⁵¹ February 28, 2014 interview with Edward Keable (Committee staff notes).

³⁵² February 11, 2014 interview with Melinda Loftin (Committee staff notes).

Conclusion

The Committee's oversight investigation has identified weaknesses in how the Department of the Interior manages its ethics program, including the timeliness of its review of financial disclosure forms and its advice about potential conflicts and the need for recusals.

The Committee also has not received copies of financial disclosure forms and recusals that were requested and that should have been on file with the Department. It is unclear if these documents do in fact exist and, if so, why they have not been identified and provided. A follow-up request has been made, but the Department has not yet responded.

The Committee's oversight also examined, as case studies, how recusals are developed and implemented for two senior political appointees. Department officials generally are not required to memorialize their recusals, making it difficult to track how conflicts are being avoided.

For example, the Committee's oversight has identified examples where BLM Director Abbey may have participated in matters involving former clients and business partners.

In another example, Counselor to the Secretary Black was allowed to interact with NextEra for six months, despite a romantic relationship with a lobbyist for the company, because the Ethics Office had not formally determined he needed to recuse himself. During this time period, Mr. Black recommended one of the company's projects to receive preferential treatment from the White House and met with senior company officials on numerous occasions.

Mr. Black reported his romantic relationship to the Department's ethics officials only after he had met a NextEra official for dinner at which they discussed possibly transferring his girlfriend from California to D.C. and Mr. Black received an email the next day discussing the move.

Committee staff also learned that company officials had been informed of the relationship before Mr. Black sought ethics advice and that the Ethics Office took several months before it followed up with Mr. Black to request additional information about his relationship or render its opinion.

The Ethics Office ultimately determined Mr. Black's relationship would lead a reasonable person to question his impartiality after a real person began asking senior Department officials about Mr. Black's work on NextEra matters. A week later, the *Los Angeles Times* published article that Mr. Black had been advised to recuse himself.

The Department's designated ethics official told Committee investigators that at the direction of the Solicitor she was not allowed to interact with political appointees without her supervisor's approval. Her immediate supervisor, who was in the process of leaving the Department, was slow to follow up and give her direction. It is troubling that the Department's designated ethics official did not feel free to provide advice directly to Department officials.

The Committee has also learned that Mr. Black's deputy was also advised to recuse herself due to a personal friendship with the same lobbyist and because Mr. Black was her supervisor.

Government employees are generally responsible for identifying conflicts and seeking ethics advice as appropriate but are not required under existing ethics laws and Office of Government Ethics rules to memorialize their recusals in writing or to provide them to their agency's ethics officials for centralized tracking or monitoring.

The lack of a centralized recusal reporting and tracking process at the Department and other agencies raises questions about how effective employees and their managers are in implementing recusals and avoiding conflicts. It can also lead to situations, inadvertent or otherwise, where an employee is contacted about, invited to meetings, or otherwise engaged on a matter that they are recused from.

The Department's redactions of keys emails and draft documents, and a key witness' refusal to answer questions, have hindered the Committee's ability to fully understand all of the events surrounding the development and implementation of the recusals for Mr. Black, Ms. Scott, and Mr. Abbey and their compliance with the ethics laws.

Given the importance of a strong, independent ethics program to ensuring the integrity of Department officials and actions being taken on behalf of American taxpayers, additional programmatic reviews of the Department's ethics program would be helpful to identify additional weaknesses and recommendations for improvement, including any changes to the law.