

**THE STATUS OF THE FISH AND
WILDLIFE SERVICE'S RESPONSES
TO COMMITTEE SUBPOENAS AND
THE CONTINUED LACK OF TRANS-
PARENCY ABOUT ITS IMPLEMEN-
TATION AND ENFORCEMENT OF
AMERICAN WILDLIFE LAWS, AND
OVERSIGHT OF THE DEPARTMENT
OF THE INTERIOR'S SOLICITOR'S
OFFICE**

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Wednesday, September 10, 2014

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**OVERSIGHT HEARING ON THE STATUS OF
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OFFICE**

**Wednesday, September 10, 2014
U.S. House of Representatives
Committee on Natural Resources
Washington, DC**

The committee met, pursuant to notice, at 10:00 a.m., in room 1324, Longworth House Office Building, Hon. Doc Hastings [Chairman of the Committee] presiding.

Present: Representatives Hastings, Bishop, Lamborn, Broun, Fleming, Tipton, Gosar, Flores, Cramer, LaMalfa; DeFazio, Costa, Cárdenas, Huffman, Shea-Porter, Garcia, and Cartwright.

The CHAIRMAN. The committee will come to order, and the Chairman, again, notes the presence of a quorum. We have far exceeded that. I appreciate that very much from the Members.

The Committee on Natural Resources is meeting today to hear testimony on an oversight hearing entitled, "The Status of the Fish and Wildlife Service's Response to Committee Subpoenas and the Continued Lack of Transparency about its Implementation and Enforcement of American Wildlife Laws and Oversight of the Department of the Interior's Solicitor's Office."

Under Committee Rule 4(f), opening statements are limited to the Chairman and the Ranking Member. However, I ask unanimous consent to include any other Members' opening statements in the record, if it is submitted to the clerk by the end of business today.

[No response.]

The CHAIRMAN. Without objection, so ordered.

I will now recognize myself for 5 minutes for my opening statement.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. In regards to oversight, it is not only Congress' right, but our responsibility to hold the executive branch accountable for its actions and decisions. In turn, we expect the administration to be honest and transparent. In my view, the reality is just the opposite.

The Obama administration has consistently engaged in a deliberate pattern of slow-rolling its responses, and purposely withholding information from Congress. Today's hearing will specifically examine examples of this from the U.S. Fish and Wildlife Service.

The Service has failed to comply with two subpoenas for documents, one related to the White Bluffs bladderpod, and the second on the administration's approach for enforcing wildlife laws, including the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act. Despite the issuance of subpoenas, the Department continues to withhold and redact documents. Even worse, the Department is going out of its way to provide even less information to Congress than it does to others.

Now, I want to give three distinct examples. On December 13, the Service provided the committee copies of about 1,000 pages of documents. These were the exact duplicates of what the Service had already provided to the Associated Press under the Freedom of Information Act, or FOIA. Some of these documents were redacted, while others were released in full to both the AP and the committee.

One of the FOIA documents was this January 2013 email that is Exhibit 1, and it is in your packages. In March of this year, the committee issued a subpoena seeking 55 specific unredacted documents, and categories of other documents. In response, the Service issued another large document production. It included the same January 2013 email—put up Exhibit 2—except this time it was redacted in several places, even though an unredacted version had already been provided to the news media and to this committee almost 6 months earlier.

In this second example, Exhibit 4, on the left is a document provided to the AP and the committee under FOIA. It contains partial redactions. We issued a subpoena for the unredacted document, and received the document on the right, which was more redacted than the one we had received previously.

Now, either the administration is incompetent, or it is going out of its way to spend time and money to withhold information from Congress. In this third example, Exhibit 5, the document on the left was released to a bird conservation group under FOIA. Only the bottom part was redacted. When the Service provided the same document to the committee in June, almost the entire document was redacted.

In addition, the Service has released documents to this same bird group last year under FOIA that has never been provided to this committee, even though it was specifically covered in the parameters of the subpoena.

So, I would like to hear, obviously, today from Director Ashe how he can justify some actions. Is this what he means when he talks about being responsive and cooperating with congressional oversight?

The Interior Department has dragged its feet on every oversight issue this committee has pursued. It has purposely sought ways to increase the burdens, costs, and delays for responding to the committee's legitimate requests.

Some claim that our requests are costly and burdensome. However, it is now evident that the administration is wasting time and taxpayer dollars by going out of its way to redact documents that have already been released. Most of their time and resources, it appears, are spent figuring out which documents to purposely withhold.

Furthermore, oversight and transparency to the American taxpayers should not be a burden at all.

We will hear today from the Department of the Interior Solicitor, Hilary Tompkins. The Solicitor's Office is the legal advisor for the Department, and decides which documents get released or withheld from Congress. I hope this hearing clarifies the Solicitor's involvement in redacting these documents.

There are other issues pertaining to the Solicitor's Office that I would like to address. Yesterday the committee released a report on the Department's ethics program, identifying significant weaknesses. Also, ahead of tomorrow's hearing with Deputy Inspector General Mary Kendall, I would like to hear again from the Solicitor to discuss the relationship and interaction with the Department's Office of Inspector General.

The administration's response to the committee oversight efforts, in my view, have been shameful. Their actions show disrespect to the transparency that they promised the American people.

[The prepared statement of Mr. Hastings follows:]

PREPARED STATEMENT OF THE HON. DOC HASTINGS, CHAIRMAN, COMMITTEE ON
NATURAL RESOURCES

In regards to oversight, it's not only Congress' right but our responsibility to hold the executive branch accountable for its actions and decisions. In turn, we expect the administration to be honest and transparent. The reality is just the opposite. The Obama administration has consistently engaged in a deliberate pattern of slow-rolling its responses and purposely withholding information from Congress.

Today's hearing will specifically examine examples of this stonewalling from the U.S. Fish and Wildlife Service.

The Service has failed to comply with two subpoenas for documents. One related to the Whitebluffs Bladderpod, the second on the administration's approach for enforcing wildlife laws, including the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

Despite the issuance of subpoenas, the Department continues to withhold and redact documents. Even worse, the Department is going out of its way to provide even less information to Congress than it is to others.

Here are three distinct examples:

In December 2013, the Service provided the committee copies of about 1,000 pages of documents. These were exact duplicates of what the Service had already provided to the Associated Press under the Freedom of Information Act. Some of these documents were redacted while others were released in full to both the AP and the committee.

One of those FOIA documents was this January 2013 email. Exhibit 1 in your packets.



Re: eagle rule

Jerome Ford <jerome_ford@fws.gov> Fri, Jan 4, 2013 at 5:31 PM
 To: "Cottingham, David" <david_cottingham@fws.gov>
 Cc: Betsy Hildebrandt <betsy_hildebrandt@fws.gov>, Stephen Guertin <stephen_guertin@fws.gov>, Dan Ashe <d_m_ashe@fws.gov>
 Bcc: Brad_Bortner@fws.gov

Before I have my staff build another rock, I respectfully request that someone with an idea of what is being asked meet with Mike, Brad and I. Every time we have to attempt to create this miracle strategy, that means we are not working on the other priorities the Director has challenged us to complete. Do my team need to sit with Steve? I will be happy to do that if that is what the Director wants.

Lastly, are to put together an eagle strategy or a strategy to permit renewable energy. The approach for these are different although they are related.

Help me out here

Sent from my iPhone

On Jan 4, 2013, at 3:39 PM, "Cottingham, David" <david_cottingham@fws.gov> wrote:

Liz -

first I heard of the Jan 14 briefing at OMB. does Jerome know about it - copied here? We can provide a preliminary discussion that the tenure rule should be there shortly. Not a problem.

I spoke with Steve yesterday. He wants a few things:

1. a comprehensive eagle document that shows what our overall strategy is regarding eagles. He wants us to have it to outsiders. We can revise the 4 or 5 pager we developed for outside use. It isn't currently drafted that way.
2. DRECP eagle research piece. The Dec DRECP document shows about 30 research projects we expect to get done in the next 5 or so years. Steve wants that fleshed out with schedules, timelines, and responsibilities. Problem is we don't know who is going to do all the research. I've spoken with some USGS folks about this. They are going to help but it exceeds their current capacity as well. We have to consider the CA research in the context of other eagle research.
3. eagle rule stakeholder dialog:
 - a) I've spoken with Julie Falkner and John Anderson this week. They would like us to schedule a meeting the last week in Feb. We need to see if that works for schedules of our guys (including DOI 6th floor folks)
 - b) Jerome and I have been talking with Robert Fleher in the CADR office about appropriate process for a dialog. We will meet with Robert next week. I think we are likely to hire a neutral facilitator to conduct a professional assessment of what people really want out of such a dialog and how to establish one. We are also consulting with SOL about FACA pitfalls to avoid.

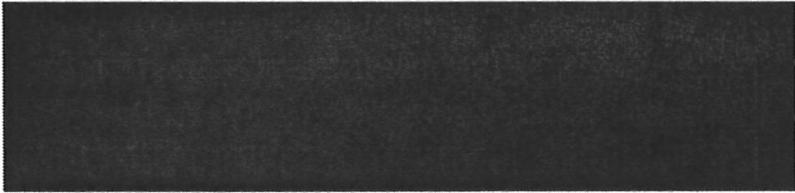
timing - we may have more to report the week of Jan 14 than next week as many folks are just returning from holidays and getting back in the swing of the office.

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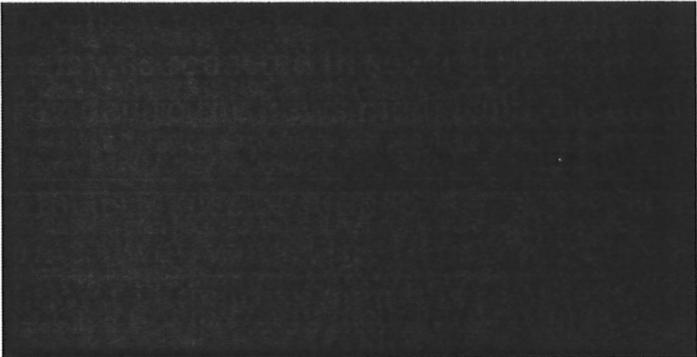
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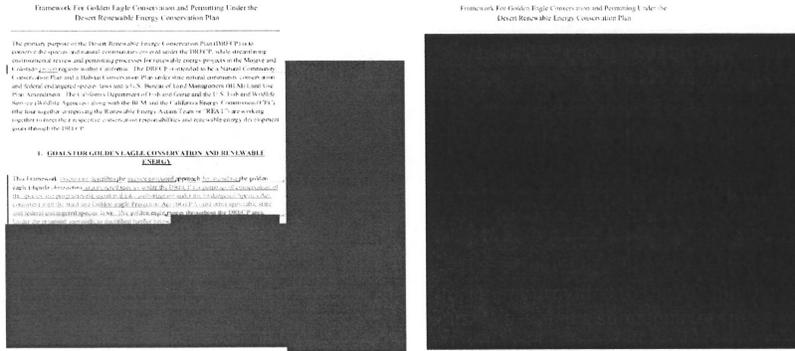
I spoke with Stew yesterday. He wants a few things:



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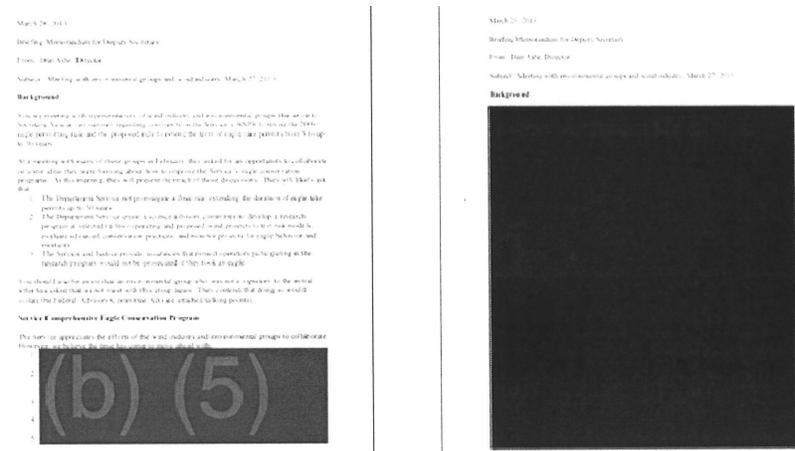
In this second example (Exhibit 4) on the left is a document provided to the AP and the committee under FOIA. It contains partial redactions. We issued a subpoena for the unredacted document, and received the document on the right—even more redacted than the first.

FOIA Document Provided in Dec. 2013 vs. More Heavily Redacted Document After



Either the administration is incompetent or it is going out of its way to expend time and money to withhold information from Congress.

In this third example (Exhibit 5), the document on the left was released to a bird conservation group under FOIA. Only the bottom part was redacted. When the Service provided the same document to the committee in June—almost the entire document was redacted.



In addition, the Service has released documents to this same bird group last year under FOIA that have NEVER been provided to the committee—even though it was specifically covered in the parameters of the subpoena.

I would like to hear from Director Ashe today how he justifies such a blatant disregard for transparency and disrespect of Congress. Is this what he means when he talks about being responsive and cooperating with congressional oversight?

The Interior Department has dragged its feet on every oversight issue this committee has pursued. It has purposefully sought ways to increase the burden, costs, and delays for responding to the committee's legitimate requests.

Some claim that our requests are costly and burdensome. However, it's now evident that the administration is wasting time and taxpayer dollars by going out of its way to redact documents that have already been released. Most of their time and resources are spent figuring out which documents to purposely withhold. Further—

more, oversight and transparency to the American taxpayers should not be considered a burden.

We'll also hear from the Department of the Interior Solicitor Hilary Tompkins. The Solicitor's Office is the legal advisor for the Department and decides which documents gets released or withheld from Congress. I intend to find out more today about the Solicitor's involvement in redacting these documents.

There are other issues pertaining to the Solicitor's Office that I would like to address. Yesterday, the committee released a report on the Department's ethics program—identifying significant weaknesses. Also, ahead of tomorrow's hearing with Deputy Inspector General Mary Kendall, I would like to hear the Solicitor discuss the relationship and interaction with the Department's Office of Inspector General.

The administration's response to the committee's oversight efforts has been downright shameful. Their actions are unjustifiable and show blatant disrespect to the transparency they promised the American people.

The CHAIRMAN. And, with that, I will recognize the Ranking Member.

STATEMENT OF THE HON. PETER DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thanks, Mr. Chairman. I believe this is at least the second hearing with Director Ashe on this topic. And, you know, I would reflect, as I did yesterday, here we are again, chasing imaginary scandals.

I would say, when you look at some of these redacted documents, yes, it doesn't make sense. But one person redacts documents per one request, and then they don't have the identical person, when someone else makes a request, redact the same documents. So you have, yes, inconsistency. Not unusual.

There is, particularly in the case, which we spent some considerable time on, of the rule regarding mountaintop removal, blatant incompetence. And then, of course, bureaucracy.

The bottom line is we have 11 subpoenas over 2 Congresses, 37 letters, 16 distinct topics, 34,000 hours of staff time diverted from things that are much more essential to the American public, \$2 million, 60,000 pages of documents, and I don't know who on the committee staff here was demanding this, has reviewed each and every of those 60,000 pages. And, if they have, they sure haven't found much.

You know, I understand that you have some very distinct policy differences with this administration, as do I, from time to time. And you know, we can pursue those things through a course of legislation and others. But seriously, you know, there is no scandal.

One of the main premises is that somehow they are favoring the wind industry and discriminating against the oil and gas industry. Well, there are 48,000 wind turbines in the United States, and there are 876,000 oil and gas wells. As we had testimony the last time, they are pursuing at this point 17 bird-take cases against the 48,000 wind turbines—haven't worked out the percentages—21 cases against the 876,000 oil and gas wells. So, on a percentage basis, we should actually be holding a hearing on why they are being so discriminatory and unbelievably aggressive toward the wind industry, and giving a pass to the oil and gas industry, if that's the premise of why we're here today, if you look at the statistics.

You know, we had testimony last time that when they go on, and they can do fly-overs and see someone hasn't netted their spoils, the effluent from the oil and gas well. They will then visit them and say, "Hey, put up netting, as required by law." And most everybody does it, and most everybody then would comply. They come back 6 months later, and if they haven't put up netting, then they go to the Justice Department.

That seems to me to be not particularly aggressive enforcement. In fact, I think maybe we should hold a hearing on why they aren't more aggressive. It seems like a year to get someone under prosecution who are blatantly and knowingly violating the law is discriminatory in favor of the oil and gas industry. So again, it seems like we are really searching for a conspiracy where one doesn't exist.

Talked about the surface mining stream protection. We went into that in great detail. And, as I pointed out at the time, it was incompetence. It wasn't an attempt to—and the end result actually favored mountaintop removal and the industry, so I'm not sure, again, what scandal we are trying to uncover.

And, maybe we could simplify things here and go back to a much older method, since this is, in fact, a witch hunt, and that is we should replace the witness table with a big tank of water, and we will bring in the Director and we will put him in there, and if he floats, then he's guilty, and if he sinks, he wasn't. You know, that's the way they used to do things back in the olden days. And maybe we should go back to older practices, and maybe we would get some more significant results.

With that, Mr. Chairman, I yield back the balance of my time.
[The prepared statement of Mr. DeFazio follows:]

PREPARED STATEMENT OF THE HON. PETER DEFazio, RANKING MEMBER, COMMITTEE
ON NATURAL RESOURCES

Thank you, Mr. Chairman.

Yet another hearing that wastes time. Yesterday, it was the 9th, 15th, 27th or whatever hearing on legislation that undermines the ESA and will go nowhere in the Senate. Today, we have a retrospective of all the outrageous, inane, costly document demands and subpoenas issued by the Majority. I guess it makes sense, we are about to break for the election so why not trod out the tin-foil hats and pretend to hold the Obama administration accountable for its so-called scandals.

Well, let's take a look at what these conspiracy-driven witch hunts have produced.

The Committee Majority this Congress has sent the Interior Department 37 letters spanning 16 distinct topics requesting documents and information.

At Interior alone, these document demands have cost taxpayers at least \$2 million and diverted 34,000 hours of staff time from serving the American people. In response, the Department has produced over 60,000 documents.

The Committee Majority also has issued unnecessary subpoenas to the Department of Agriculture and the Office of Management and Budget, and threatened the Justice Department with a subpoena in the course of demanding still more documents.

I understand the Majority has policy differences with the administration, and our committee should be debating those differences. But the Majority seems to believe that nefarious influence lies at the heart of every disagreement; when the documents don't reveal the nefarious influence, it must be because the administration is hiding something, which means new document demands and subpoenas.

But the majority refuses to accept reality—a reality supported by all the thousands of pages of documents provided to the committee.

Consider a few of the examples before us today:

- In the United States, there are about 48,000 wind turbines compared to 876,000 oil and gas wells, which “take” an estimated one to two million birds a year. As of March, the Fish and Wildlife Service was investigating 17 “bird take” cases involving the wind industry and 21 cases involving the much larger oil and gas industry.

The Service reported this data—which answers the Majority’s central oversight question—before the Chairman even issued his subpoena. The Forest Service has now provided more than 11,000 pages of documents to the committee. And guess what, no scandals.

- The Interior Department also has provided the committee with roughly 14,000 pages of documents over the last two Congresses related to the Office of Surface Mining’s Stream Protection rulemaking. These documents refute Republican accusations, as the Committee’s Democratic staff documented in a report issued *more than 2 years ago*.

The Interior Department’s Office of Inspector General investigated as well. And guess what, no scandals produced.

So here we are, wasting yet more time so the Majority can argue that the lack of scandal is an indication that the Service has hidden the damning documents from view. How the Majority is so certain of these scandals, I have no clue. Maybe they are listening to their own intuition, maybe the tea leaves point to scandal, or their Magic 8-ball urged them on.

Well, here’s another way the Majority can find out if their accusations are defensible. This test won’t waste millions of taxpayer dollars—as they have done with the dozens of requests. This test will not consume thousands of staff hours and distract them from their actual jobs. All they need to do is bring in a dunk tank full of water. And if Service officials float, the majority will know their political witch hunt was justified. That’s all this is—a witch hunt.

The CHAIRMAN. I would just say you, my friend, the Ranking Member, has been here longer than I; did they do that before I got here? And, if so, did it work?

Mr. DEFAZIO. That is what we did when we were in charge.

The CHAIRMAN. Let the record show that the Ranking Member answered in the affirmative.

Well, we are pleased today that we have two witnesses that have come in. Yes, Director Ashe has been here, and I have had private conversations with him, and this is, obviously, an ongoing issue.

And, yes, there are differences. I will be the first to acknowledge that. But for the American people to have an understanding of what is going on and why it is going on, obviously, we have to have documents.

Director Ashe has told me privately and publicly that he is certainly willing to be available, and he is here, and I am glad that he is. I am also glad that the Solicitor is here, also, Hilary Tompkins. Now, we had a conversation during the break, and we tried to be accommodating. And I know that we originally scheduled you for tomorrow, but to accommodate you we worked out the schedule today. So I appreciate your being here.

I know you both know the rules, but I will say it anyway, your full written statement that you submitted will be part of the record, and we would like to keep your oral arguments within the 5-minute parameter. That timer in front of you has a green, yellow, and red light, and the green light means that you are doing very well up to 4 minutes. Then, when the yellow light comes on, it means that there is a minute to go, and then, when the red light

comes on, it is a very similar situation when you are driving through a yellow light: you speed up.

So, I appreciate your being here. And so, Director Ashe, we will start with you, and you are recognized for 5 minutes.

STATEMENT OF THE HON. DAN ASHE, DIRECTOR, FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. ASHE. Thank you and good morning, Mr. Chairman, and members of the committee. As I stated when I testified on this subject about 5 or 6 months ago, I am here today at your request to answer your questions to the very best of my ability. And as I said then, I have, without exception, made myself and the senior employees and officers of my Bureau available to the committee and its members without exception.

Since the March hearing we have provided additional responsive materials as an attempt to accommodate the needs of the committee. We have offered the committee staff opportunity for in-camera review of all of our closed law enforcement case files. We provided additional staff briefings and interviews, and I have met with you, Mr. Chairman, as you acknowledged, in your office, and we have spoken on the telephone on several occasions.

But, based on the title you have chosen for this hearing, I accept that you remain unsatisfied with our responsiveness, and I will just say that disappoints me, as I believe we are making exceptional efforts to be responsive.

And as an example I will say that, currently, one of our highest priorities is dealing with the ongoing slaughter of African elephants and syndicated trafficking of elephant ivory. And one success in that effort has been Operation Scratch-Off, an undercover operation that resulted in numerous convictions of poachers and traffickers, and the seizure of more than 1 ton of elephant ivory. The thousands of hours that our law enforcement agents have had to put in to respond to the committee's demands for documents is equivalent to the time that we invested in Operation Scratch-Off.

So, instead of producing documents, these really best-in-the-world law enforcement professionals should be putting poachers and traffickers in jail, and further helping the global effort to stop the slaughter of these majestic creatures. So I guess I agree with you, Mr. Chairman, that this effort is wasting time and attention and effort at a very crucial time for our organization.

There is a perception among some, I think, that the U.S. Fish and Wildlife Service is preferentially applying laws like the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, and that that preferential application is politically motivated. Just let me say unequivocally that both are completely false. And the committee's investigation has produced not a shred of evidence to support the accusation that we are applying these laws preferentially.

The U.S. Fish and Wildlife Service is an organization of outstanding professionals and public servants. Nowhere is that more true than in our law enforcement ranks. We follow the facts where they lead us, period. There have been no attempts to politically direct or influence the enforcement of these laws. And if it were at-

tempted, the effort would meet unrelenting opposition from within the organization.

Mr. Chairman, I am here today, as I always have been, at your request, and ever hopeful that I can do a better job at getting you the information that you need to fulfill this committee's oversight responsibilities. I believe I have done, and can and will do what is reasonable to accommodate the committee. But I cannot do that if it is going to require me to sacrifice critical mission function in the process.

Thank you very much.

[The prepared statement of Mr. Ashe follows:]

PREPARED STATEMENT OF DAN ASHE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE,
DEPARTMENT OF THE INTERIOR

Good morning Chairman Hastings, Ranking Member DeFazio, and members of the committee. I am Dan Ashe, Director of the U.S. Fish and Wildlife Service (Service). Thank you for the opportunity to discuss the Service's extensive efforts to respond to the committee's multiple requests for documents related to various topics. Since I last testified before this committee, the Chairman and I have had the opportunity to speak on several occasions regarding various issues. I appreciate the opportunity to have had those conversations and I welcome a continued dialog with the committee and its members.

The committee plays a key oversight role in ensuring that the Service fulfills its conservation and public service mission, the foundation of which rests in the numerous wildlife and natural resources conservation laws enacted by the Congress. The Service and the Department of the Interior (Department) recognize and respect the committee's oversight role of the Federal agencies within its jurisdiction. I hope that, through our conversations, we can continue to accommodate the committee's legitimate oversight interests while protecting Department and Service employees' ability to carry out their important work.

COMMITTEE OVERSIGHT AND DOCUMENT REQUESTS

Since the beginning of the 113th Congress, the Department and its bureaus have received 37 letters from the House Natural Resources Committee related to document requests on 16 distinct topics. The Department oversees the process used to respond to such requests by each of the individual bureaus, including the Service. To date, during this Congress, the Department has provided the committee with more than 60,000 pages of documents and a number of related briefings. The Department has dedicated nearly 34,000 staff hours and more than \$2 million in resources toward responding to congressional document requests, most of which were from this committee.

For the Service, there have been four separate issues subject to seven document requests and subpoenas between March 7, 2013 and May 30, 2014. Those issues include: a document request and subpoena regarding enforcement of Migratory Bird Treaty Act (MBTA) and the Eagle Act, a document request and subpoena regarding the listing of the White Bluffs Bladderpod under the Endangered Species Act (ESA), a document request regarding the determination whether to list the sage-grouse under the ESA, and a document request regarding the scientific integrity policy.

The following information provides the current status of the Department's responses to these requests.

Document Request and Subpoena regarding Enforcement of MBTA and the Eagle Act

On May 16, 2013, the committee requested documents from the Service pertaining to the enforcement of the MBTA and the Eagle Act against energy companies, including: (1) copies of documents related to Service investigations, as well as referrals to the Department of Justice, created between January 2009 and the present; (2) copies of communications between the Service and representatives from wind energy companies; (3) copies of policies, legal analysis, and emails related to enforcement discretion under the MBTA and Eagle Act; (4) communications between the Service and the American Wind Wildlife Institute; and (5) documents related to meetings concerning proposed revisions to the eagle take regulations.

Since receiving the Chairman's original letter of request for MBTA and Eagle Act enforcement documents on May 16, 2013, and its subpoena issued on March 11, 2014, the Department has provided over 11,000 pages of documents to the com-

mittee on the following dates: September 18, 2013, December 2, 2013, December 13, 2013, February 26, 2014, March 10, 2014, March 20, 2014, March 24, 2014, April 3, 2014, April 25, 2014, May 9, 2014, June 27, 2014, and July 11, 2014. Of the nearly 34,000 hours of staff time noted above, Service staff spent thousands of hours reviewing years of records and files to comply with this request of the committee.

In addition to providing these document productions, the Department and the Service have also made senior staff and myself available to the committee. On December 17, 2013, committee staff met with Mr. William Woody, Chief of the Service's Office of Law Enforcement, who answered questions related to enforcement of the MBTA and the Eagle Act. Between March 26, 2014 and April 3, 2014, I testified before this committee on this issue, spoke with Chairman Hastings over the phone and met with committee staff with Chief Woody.

During the April 3, 2014, meeting, the Service sought to provide accommodations to improve the efficiency of getting information to the committee. In its March 11, 2014, subpoena, the committee asked for documents related to a broad set of investigations by the Office of Law Enforcement of violations of the MBTA and/or the Eagle Act. Responding to this request would have required an inordinate amount of time from the agency's professional law enforcement personnel, taking them away from critical work investigating wildlife crimes. The Service offered to instead provide case summaries in the short term and provide in-camera review of any of the cases the committee was interested in based on those summaries. The committee has not yet requested such in-camera review.

Despite these efforts to respond to the committee's requests for documents, on March 11, 2014, the committee issued a subpoena reiterating parts of the previous request as well as requesting additional new documents. With the Service's July 11, 2014, letter, the Service completed its work to respond to the May 2013 request and the March 2014 subpoena. Any further documents that are provided on this issue will be transmitted by the Office of the Secretary.

Document Request and Subpoena regarding the Listing of the White Bluffs Bladderpod under the ESA

On March 7, 2014, the committee requested documents from the Service pertaining to the listing determination and the critical habitat designation for the White Bluffs bladderpod, including: (1) a copy of the report entitled, "Evidence for Recognition of *Physaria Tuplashensis* (Brassicaceae)", explanations of how it was obtained and if it underwent peer review, and communications between the Service and the authors; (2) communications between the Service and the peer reviewers for the listing determination and critical habitat designation; (3) all documents related to the peer reviewer selections; (4) all documents relating to conflict of interest, financial disclosures, prior policy positions, sources of funding, or recusals from the peer reviewers of the listing determination and critical habitat designation; (5) all documents related to the charge questions and instructions given to peer reviewers; and (6) all communications between the Service and the Center for Biological Diversity related to the White Bluffs bladderpod.

The Department and the Service continue to cooperate with the committee to provide information that is responsive to its concerns about these issues. Since receiving the Chairman's original letter on March 7, 2014, and its subpoena issued on April 7, 2014, the Department has provided approximately 80 documents totaling more than 700 pages to the committee on April 2, 2014, and April 18, 2014. To compile this information, Service staff spent many hours reviewing records and files to comply with the committee's request. The Service also responded in writing on this issue to additional letters from the committee on this subject on June 6, 2014, and July 25, 2014.

In addition to providing the written documents, the Service has also met in person or held phone calls with the committee on four occasions between April 1, 2014 and July 1, 2014. During this period I spoke with Chairman Hastings on the telephone twice and met with the Chairman in person once. I also met separately with committee staff. Field Supervisor Ken Berg was interviewed by the committee staff on the telephone.

We believe the Department's responses to the committee on this subject have provided all documents responsive to this request.

Document Request regarding the Determination whether to List the Sage-Grouse under the ESA

On March 7, 2013, the committee requested documents from the Department pertaining to the National Technical Team Report, "A Report on National Greater Sage-Grouse Conservation Measures," (NTT Report) including: (1) information on how much money the Department has spent on sage-grouse conservation measures;

(2) how many full-time employees are assigned; (3) does the NTT report adequately and accurately reflect scientific findings in each of the regions where a regional management plan is being considered; (4) a description of what additional or differing data and science were utilized to support the March 2010 finding that the greater sage-grouse warrants listing; (5) a list of all authorizations or permitted activities that have been submitted or proposed to BLM for approval; and (6) a list of dates and locations of all upcoming public meetings BLM has scheduled, and internal deadlines for required decisions by FWS (and others) relating to sage-grouse in 2013 and 2014.

The committee also requested other documents as follows: (7) all documents, including internal memoranda, related to implementation and enforcement of Instruction Memos 2012-043 and 2012-044; (8) all documents, including internal memoranda and any letters sent to state agencies, officials or employees, or any non-governmental organizations (NGO) related to any state program being exempt from compliance with aforementioned memos; (9) all drafts of aforementioned memos, including those sent to the Office of the Solicitor, state agencies, or NGO; (10) all documents related to the creation, implementation, enforcement and/or rescinding of Nevada State BLM Instruction Memoranda 2012-056, 2012-057, and 2012-058; (11) all documents related to the establishment and the authority to establish the National Technical Team; (12) all documents related to the selection and appointment of National Technical Team members; (13) all documents, including peer reviewer comments, related to implementation and enforcement of the NTT Report; (14) all documents related to BLM's decision to develop alternatives included in the Sub-Regional Sage-Grouse Environmental Impact Statement; and (15) all documents related to the analyses of socio-economics impacts related to the sage-grouse.

Since receiving the Chairman's original letter on March 7, 2013, the Department has provided nearly 3,000 pages and more than 80 documents to the committee on May 8, 2013, May 14, 2013 and August 21, 2013. In addition, Department staff met with committee staff on July 11, 2013, and based on that conversation, provided additional information to the committee in a July 25, 2013 letter.

Document Request regarding Scientific Integrity Policy

On July 31, 2013, the committee requested documents from the Service pertaining to complaints about scientific integrity policy violations at a Service field office. The committee asked for documents as follows: (1) all documents related to an OIG Management Advisory issued July 11, 2013; (2) all documents contained in certain files maintained by the Service's Human Resources Department or the Office of the Solicitor; (3) a description of actions taken by the Service in response to investigations; and (4) a copy of all correspondence provided to the Office of the Inspector General regarding this issue.

Since receiving the Chairman's original letter on July 31, 2013, the Department provided 7 documents totaling more than 70 pages to the committee on January 27, 2014, and April 18, 2014. In addition, a briefing was provided to committee staff on September 13, 2013.

CONCLUSION

The Service recognizes, respects, and values the oversight role of Congress and this committee. The Service has a consistent track record of making our leadership available to the committee to answer questions and to listen. Requests for information in writing and requests for documents are important components of the oversight process. However, the process of responding to expansive and numerous document production requests is a significant drain on Service resources, diverting staff with expertise away from their primary responsibilities to support on-the-ground conservation. I hope we can work together to find efficient ways to get the committee the information it needs to carry out its legitimate oversight role.

Thank you again for this opportunity. I will be pleased to answer any questions that you may have.

The CHAIRMAN. Thank you, Director Ashe. I appreciate your opening statement.

And now I will recognize Solicitor Tompkins for her opening statement.

**STATEMENT OF THE HON. HILARY TOMPKINS, SOLICITOR,
OFFICE OF THE SOLICITOR, U.S. DEPARTMENT OF THE
INTERIOR**

Ms. TOMPKINS. Thank you, Mr. Chairman, members of the committee. It is a pleasure to be here today. My name is Hilary Tompkins, and I am the Solicitor for the Department of the Interior. We are charged with overseeing the legal issues of a vast, multi-faceted agency, the Department of the Interior, and it is a real honor and privilege to be here today.

This is the first personal invitation I have had to engage with the committee, so I am really pleased to be here. And I wanted to thank Chairman Hastings for accommodating my schedule, and also talking with me personally on the phone in advance of this committee hearing. I greatly appreciate it.

If I could ask for your indulgence, I would like to just also introduce myself under my Navajo tradition. I am a member of the Navajo Nation. And when we appear before esteemed leadership and government officials, it is proper to do that according to our culture. So it just takes one second, and I know it is going to count against my time.

[Speaking native language.] I said that I am from the Salt Clan on my mother's side and Taos Pueblo on my father's side, and I come from New Mexico.

Let me start by saying that the Solicitor's Office plays a role in the oversight process. We have a varied mission. We deal with a number of different natural resource laws, and Indian law, as well. And, at the outset, I want to emphasize that we do respect the oversight authority of this committee, and we want to help the Department meet the legitimate oversight needs of the committee, while minimizing the impact on our daily work, as Director Ashe alluded to.

As Solicitor, I am responsible for providing legal advice for all the programs and operations and activities of the Department. I cannot fulfill these obligations without the tremendous hard work and highly specialized expertise of the attorneys in the Solicitor's Office. We have an immediate office, we also have an ethics office, four legal divisions focusing on vast areas of law, public lands, water, minerals, Indian affairs, parks, wildlife, general law division, administrative division, and 16 offices throughout the country.

The legal review process in the oversight context is managed by one of my deputies, a career manager who has many years of experience working in the civil service area of ethics and oversight. We also have a number of staff attorneys approaching about—a little less than 350 attorneys. Given that a lot of the areas of the oversight requests involve highly specialized areas of law, we have other staff attorneys assist in the process to provide their expertise in assisting us in responding to requests.

To date, solicitor attorneys have carried out almost 700 hours of review of documents for 16 oversight matters in the current Congress. Through this work, our office has significantly contributed to an ongoing effort on behalf of the Department to accommodate the committee's interests. We have sought to work with committee staff in order to fully understand the oversight interest to

the particular request, so that we can attempt to allocate the resources to best meet your needs.

The accommodation process is a key tool in the interaction between the legislative branch and the executive branches of government, with the primary goal being that the legislative branch provides an appropriate check, while ensuring that such oversight does not inappropriately intrude upon the executive branch's functions and authority.

The Department's approach to accommodation has consistently been to work in a way that respects our mutual constitutional interests. With each oversight request, the Solicitor's Office supports the Department in this process of balancing the interests between the two branches. This undertaking is time-consuming, requires careful consideration of executive interests, general legal counseling as well, including any pending litigation or other issues, as well as legal review of the responsive documents, which can be a massive and complex undertaking.

I come before you today in the spirit of deep respect for the constitutional process we are engaged in. While it can foster great debate and disagreement, it serves an important purpose in our constitutional democracy.

Thank you again, and I am pleased to answer any questions that you may have.

[The prepared statement of Ms. Tompkins follows:]

PREPARED STATEMENT OF HILARY TOMPKINS, SOLICITOR, U.S. DEPARTMENT OF THE INTERIOR

Good morning Chairman Hastings, Ranking Member DeFazio, and members of the committee. My name is Hilary Tompkins, and I am the Solicitor of the U.S. Department of the Interior, an agency charged with protecting America's landscapes and heritage, honoring our unique responsibilities to tribal communities, and overseeing the responsible development and use of our country's natural resources. Thank you for the opportunity to discuss with you the role of the Solicitor's Office relating to Congressional Oversight activities.

At the outset, I would like to thank you, Mr. Chairman, for accommodating my schedule with regard to your invitation to testify. I would also like to thank you for speaking with me regarding the committee's oversight interests and concerns. As I hope that I made clear during our recent conversation, I personally, and the Solicitor's Office generally, recognize the important role of the committee in ensuring that the Department accomplishes its varied and significant natural resource missions, as established in Federal law. We also appreciate and respect the committee's oversight role with respect to the activities of the Department of the Interior. I believe that conversations such as our recent call, which allow for a better mutual understanding of the respective interests of the committee and the Department, can allow the Department to meet the legitimate oversight needs of the committee while minimizing the impact on the Department's ability to carry out its missions and day-to-day work.

OVERVIEW OF THE OFFICE OF THE SOLICITOR

I am the principal legal adviser to the Secretary of the Interior and the Chief Law Officer of the Department. I am responsible for providing legal services for all programs, operations, and activities of the Department. I meet these obligations through the work performed by the attorneys in the Office of the Solicitor (SOL), who provide advice, counsel, and legal representation to the Immediate Office of the Secretary, the Assistant Secretaries, and the bureaus and offices overseen by the Secretary.

The scope of the legal work for which I am responsible is broad by design and encompasses the interpretation and application of all legal authority affecting actions proposed or taken under the Department's programs and operations, including statutes, judicial decisions, and executive orders. The actions on which the Solicitor's Office advises are accordingly broad as well, encompassing not only mat-

ters in litigation but also other bureau activities, such as responses to requests for information under the Freedom of Information Act or other authorities and decisions regarding interaction with third parties.

The Solicitor's Office is organized into the Immediate Office of the Solicitor, the Ethics Office, 4 legal divisions that focus on supporting one or more of Interior's bureaus in the areas of public lands and water, minerals, Indian affairs, and national parks and wildlife, a general law division, an administrative division, and 16 regional and field offices located throughout the United States. As Solicitor, my staff consists of 401 employees, 324 of whom are lawyers, and it includes a Principal Deputy Solicitor, 6 Deputy Solicitors with subject matter expertise, Senior Counselors, an Ethics Director, 6 Associate Solicitors who manage the Divisions, and 8 Regional Solicitors who oversee our field operations. The overarching mission of SOL is to provide top quality legal counsel and advice to the Department and fulfill our professional responsibilities to the Department.

ROLE OF THE SOLICITOR'S OFFICE IN CONGRESSIONAL OVERSIGHT

As noted above, the legal work of the Solicitor's Office encompasses advising on actions taken under the Department's programs and operations. This includes providing legal advice as part of the process for determining the proper scope and manner of the bureau or office's response to oversight requests from congressional committees. Accordingly, Solicitor's Office attorneys are routinely involved in assisting with the legal review and preparation of materials to satisfy congressional requests for information.

The work of the Solicitor's Office on congressional oversight requests consists primarily of advising on the proper steps to follow in searching for and gathering responsive documents, reviewing documents for responsiveness to the request, and identifying possible executive interests in the responsive material, including matters that are confidential or privileged. The legal review process is managed by a senior, career attorney manager with the assistance of staff attorneys. Typically, given the highly specialized legal areas that are often intertwined with issues that are the focus of an oversight request, staff attorneys that possess the necessary unique expertise will assist in the legal review process. The attorneys that are assigned to this work perform this work in addition to their regular legal work obligations. To date, SOL attorneys have carried out almost 700 hours of review of documents for 16 discrete topics in the current Congress for this committee.

Through this work, the Solicitor's Office has significantly contributed to an ongoing effort on behalf of the Department to accommodate the Congress's legitimate oversight interests. The Department has received requests for information from multiple congressional committees. In each instance, the Department has sought to work with committee staff in order to fully understand the oversight interests related to the particular request, the priorities of the various committees overseeing the Department, and the specific issues of concern, so that the Department can attempt to allocate resources to best meet congressional needs in priority order.

This is important but labor-intensive work. It is labor-intensive work because, as the courts have recognized for decades, there are legitimate differences between the executive and legislative branches regarding their respective roles and interests. Pursuant to the separation of powers doctrine, Congress engages in oversight of the executive branch's implementation of law. Likewise, the executive branch's role is to implement and execute the laws and engage in administrative decisionmaking. Congress' oversight role relative to the executive's authority is among the checks and balances established under the Constitution.

The accommodation process is a key tool to ensuring that these checks and balances function properly. The Department's approach to accommodation consistently has been to work in a way that respects our mutual Constitutional interests, and the Solicitor's Office supports the Department in this process. This undertaking is time consuming and requires careful consideration of any executive interests, general legal considerations, including any pending litigation or settlements, counseling the affected offices and bureaus of the Department, and legal review of responsive documents, which can be a substantial and complex undertaking.

THE ROLE OF THE ETHICS OFFICE

The Departmental Ethics Office implements the statutory and regulatory ethics requirements of the Federal Government and DOI. The Departmental Ethics Office is headed by a career Designated Agency Ethics Official (DAEO) who coordinates and manages the Department's Ethics Process. The duties of the DAEO are to develop and interpret ethics related-regulations and policies, administer and monitor the financial disclosure systems, design and implement the training programs, and

provide employees with ethics counseling services, including conflict of interest analysis, and conducting internal compliance reviews. Deputy Ethics Counselors within each bureau oversee the day-to-day implementation of their bureau ethics program by administering the financial disclosure system, conducting ethics training, and providing ethics counseling and advice to bureau employees. Presently, the Ethics Office consists of the DAEO, five staff attorneys, four ethics specialists, and two contractors.

Some of the current activities of the Ethics Office include compliance reviews of bureau ethics programs, developing and delivering extensive training including new entrant, annual, and post-government employment training, and day-to-day ethics counseling. The Ethics Office publishes a newsletter entitled "Ethics Express," conducts town hall meetings and webinars around the country, and provides education and training to the Department's bureau ethics counselors. The Ethics Office also serves as the Department's Hatch Act compliance unit.

In recognition of these innovative activities, Department's Ethics Office, under the current DAEO's leadership, has received multiple awards from the Office of Government Ethics. These awards include Recognition of Outstanding Achievement in Developing Education and Communication Products that Foster an Ethical Culture (2008); Recognition of Outstanding Achievement in Managing the Ethics Program (2010); the Excellence and Innovation Award (2011); Program Excellence and Innovation for an Ethics Event (2011); and recognition for Program Excellence and Innovation for a Product to Raise Awareness (2011).

CONCLUSION

I come before you today in the spirit of deep respect for the Constitutional process in which we are engaged. While there may be points of disagreement during the course of this process, it serves an important purpose in our Constitutional democracy. I look forward to continuing to work with you to accommodate your legitimate oversight interests while also protecting the legitimate interests of the executive branch.

Thank you again for this opportunity. I will be pleased to answer any questions that you may have.

The CHAIRMAN. Thank you very much, Solicitor Tompkins. I was prepared to give you more time after your introduction, because Director Ashe had not used all his time. We try to level those out—

Ms. TOMPKINS. Well, thank you.

The CHAIRMAN [continuing]. But you did very, very well.

Director Ashe, let me start with you. Yesterday I received a letter from the Secretary, and I am sure you got a copy of that, with precise figures on the cost and the burden for responding to our oversight request. You alluded to that in your opening statement, and you have made that observation in other venues here, in front of this committee. And I think the Ranking Member also alluded to that.

So, here is a dilemma that I face. How is it that you can track what appears to be the exact costs of responding to our oversight request, but when the committee asks how much, for example, the Department is spending on the sage-grouse listing, we get absolutely no information. Or, when we ask how much is it costing with this ESA settlement, mainly the mega-settlement, we don't get any information. Or, how much is it costing to rewrite the stream buffer rule, which has a lot of controversy, also. And yet the Department can't give us any figures on that.

Now, here is the dilemma that we face. We think that those are very legitimate questions, because there is some controversy surrounding those. And yet we don't know how much time and money you are spending. And yet you come here, and I know you budget

for oversight, I know that, within the Department of the Interior, there is a budget for oversight, and you tell us that that is a burden. I have a hard time reconciling that. Can you help me reconcile that?

Mr. ASHE. First, Mr. Chairman, I have no budget for oversight. If I send my—

The CHAIRMAN. The Department of the Interior does, however.

Mr. ASHE. Well, I can't speak for the Department, but I have no budget for oversight. So every time I respond to a request like this, it is coming from my operational accounts. And I would say, as far as tracking the exact costs, what we have given you is an estimate of the direct costs to respond to the committee's requests, because we can, as we are, as people are undertaking direct action to respond to these requests, they are keeping a log of their hours.

But it is not the full cost, because it doesn't include, for instance, my time. So, as I have prepared for this hearing, I have probably put 12 to 15 hours of personal time into preparation for this hearing. That requires probably a dozen people behind me to do preparation work. That is not included in these numbers for response. So—

The CHAIRMAN. But, Director Ashe, I mean, obviously, whether it is not a line item or not, you know that part of the oversight of any administration with any Congress is part of the job.

Mr. ASHE. It is.

The CHAIRMAN. OK, right.

Mr. ASHE. And I don't begrudge my part of the job. You asked about the exact cost. It is not the exact cost, I would say it is a conservative estimate of the costs of responding to the—

The CHAIRMAN. Well, then, here is the dilemma. Here is the dilemma. And maybe you are not the one to ask, and so it will be a rhetorical question. How is it you can give us, how is it the Department can give us an estimate of this cost, but can't give us the cost on the sage-grouse, or even an estimate, they can't give us an estimate on the stream buffer zone?

I know that is not under your purview, but see, those are the things that cause us angst up here. We are trying to find information, and at least what was given to us here, your precise costs, and then in other areas, absolutely nothing. How can there be an openness when you have that sort of response? That is a rhetorical question, because you don't have responsibility.

Let me go back to the redacted copies there that I showed. I only gave three examples; there are many, many examples of that. Just give me your explanation of how that sort of stuff happens.

Mr. ASHE. Well, I think Ranking Member DeFazio probably put it correctly. The FOIA process and the process of responding to a congressional document request are two different processes. They are different people. And that is added by the urgency. When you send me a subpoena, people are working quickly. So I guess those people, we are not sitting down and comparing and contrasting, so people are making decisions within their own realm of expertise and process.

The CHAIRMAN. Well—

Mr. ASHE. And so then, coupled with the fact of speed means that there will be some inconsistency, and I recognize that clearly is——

The CHAIRMAN. Well, I will tell you, my time is expired, I will just simply make this statement. We have discovered time and time again that information given under FOIA was given under FOIA and not to us, even under a subpoena. And if stuff was given to us under a subpoena, it was heavily redacted.

Now, once again, how do you build confidence when you get that sort of activity? That is the dilemma that we are facing, and that causes a bit of angst, as I mentioned earlier.

I recognize the Ranking Member.

Mr. DEFAZIO. Well, then, that leads to an interesting thought. Then perhaps the committee should make FOIA requests.

[Laughter.]

Mr. DEFAZIO. Say an average voluminous FOIA request along the lines of some of the ones made here, how long does it take the Department to honor those requests?

Mr. ASHE. Mr. DeFazio, those are also very lengthy, that is a very lengthy process. I can't give you the precise——

Mr. DEFAZIO. I have heard groups complain that they waited more than a year.

Mr. ASHE. Oh, they complain incessantly that we are unresponsive to their FOIA requests.

Mr. DEFAZIO. OK. So there is a considerable difference in the time span here.

Now, you have been, I don't know your exact biographical history, but were you with the Department when a political appointee named Julie MacDonald was employed by the Bush administration?

Mr. ASHE. I was a career employee with the——

Mr. DEFAZIO. Yes? Do you recall what happened to Ms. MacDonald? Wasn't there an IG investigation, and didn't they find that she was attempting to politically manipulate both listings and other things that related to the Department?

Mr. ASHE. Listings and critical habitat determinations. And we were remanded to redo several dozen decisions that Julie MacDonald was involved in.

Mr. DEFAZIO. You had to redo that work?

Mr. ASHE. Because of the political interference.

Mr. DEFAZIO. And I assume that took considerable cost and time, to redo the work straight up, using scientific as opposed to political science.

Mr. ASHE. Correct.

Mr. DEFAZIO. Science-science, political science——

Mr. ASHE. Substantial.

Mr. DEFAZIO. So I guess what we are dealing with here is sort of the ghost of Julie MacDonald, who was a political hack in the Bush administration who did attempt to manipulate career employees and come up with decisions that were based in her judgment, and not in the judgment of the scientists.

You have an IG. Are you aware of anything similar that has gone on during this administration?

Mr. ASHE. Not at all. In fact, this administration has put in place a process that would prevent that. So when we make endangered species listings and critical habitat determinations, our proposals do not receive political-level review.

Mr. DEFAZIO. They don't?

Mr. ASHE. They do not.

Mr. DEFAZIO. Oh, my gosh. Oh, well, that is interesting.

I think the stream buffer rule is probably not in your shop, right? That is—

Mr. ASHE. It is not.

Mr. DEFAZIO. Yes. Yes. My recollection is that someone should be fired for that, because they hired a totally incompetent contractor who totally screwed it up, and now we are nowhere on that rule. But I guess you can't comment on that; if we had someone from the broader Department, I could get a comment on that issue.

The other point you made about the \$2.4 million that, in terms of the largest bust of despicable people trafficking illegally in ivory and causing wanton slaughter of elephants, you said that investigation, how long did that take?

Mr. ASHE. I don't know the length of time. Usually those types of investigations take 18 to 24 months, because they involve sensitive undercover operations, setting up commercial enterprise, developing contacts. So they usually take at least 18 to 24 months to come to fruition. And then the process of then referring to the Justice Department, getting prosecution, takes even longer.

Mr. DEFAZIO. Could we infer that there may be similar ongoing investigations?

Mr. ASHE. As we speak.

Mr. DEFAZIO. As we speak. So we spent \$2 million, and we did bust up one really bad ring. And so there are other ongoing investigations that may be of a similar magnitude.

Mr. ASHE. There are many of a similar magnitude.

Mr. DEFAZIO. OK. So we could perhaps spend \$2.4 million more productively in going after bad guys, rather than chasing chimeras.

Mr. ASHE. We are, again, as we speak, we are trying to figure out how to place law enforcement agents in key embassies around the world, so that we can more effectively network with the law enforcement community across the globe.

Mr. DEFAZIO. That would be fabulous, because of some of what is going on in Africa now, with incredible slaughter of elephants. Not sport hunting, but slaughter, and some by terrorist groups.

So, thank you, Director. Appreciate it.

The CHAIRMAN. I thank the gentleman. I recognize the gentleman from Louisiana, Dr. Fleming.

Dr. FLEMING. Thank you, Mr. Chairman. And listening very carefully, I find that the excuses for the reason for not being transparent, both from the other side of the aisle and from the table of testimony, is either a bureaucracy, we are too busy, or it costs too much. The only thing left, Mr. Chairman, is "The dog ate my homework." But let me move forward.

Director Ashe, I want to pick up on the Chairman's line of questions about these redactions. And I will refer you to Exhibit 17, if you will. It shows just how arbitrary the Department has been in

making these redactions, and how baseless its claims are about why these redactions are being made.

At the March hearing I asked you about a draft memo from you to the Secretary that was specifically requested in the subpoena. When you testified before the committee in March you were asked several times about who was responsible for deciding what gets redacted and what gets released to Congress. You said repeatedly that you were not a lawyer, that the Service was not responsible, and that there was an internal review process at the Department to make these redactions.

You also said the Department had not claimed executive privilege for any of the documents being withheld.

Director Ashe, this is still one of the documents the Service is refusing to provide. So, again, none of those excuses, whether they are reasonable or not, can be applied to this. We just simply asked for an unredacted document. It should take 3 minutes and no cost. Why has this memo still not been turned over to the committee? And has executive privilege been claimed?

Mr. ASHE. I think I will defer to Solicitor Tompkins for a more detailed response.

I guess what I would say, Mr. Fleming, in response to this is the accommodation process that we would go through, if the committee has specific concerns about this document, then those are the kind of questions that you could ask specifically during the accommodation process.

Dr. FLEMING. So——

Mr. ASHE. And we—it is possible that we could——

Dr. FLEMING. So the problem is we are not asking in the correct manner. We should do a better job asking for the one document that we keep asking for over and over.

Mr. ASHE. That is——

Dr. FLEMING. That is your answer?

Mr. ASHE. The accommodation process is to work with the committee to try to figure out, OK, of the documents that we provided, if there are redactions, that for some reason, seem——

Dr. FLEMING. I am running out of time, but basically, you are saying, as a fifth excuse here, is that Congress doesn't know how to ask for documents.

Well, then, let me go to you, Ms. Tompkins. As Director Ashe has said, he is not a lawyer and he is not the one deciding what gets directed. You are a lawyer, in fact, and you are the Department's top lawyer. So, are you the one in charge of this process, reviewing documents and making these redactions?

Ms. TOMPKINS. Let me say that the lawyers in my office do review the documents for whether there are executive interests that implicate confidentiality.

Dr. FLEMING. But you are the head lawyer, so you are in charge of the——

Ms. TOMPKINS. I oversee the——

Dr. FLEMING [continuing]. Underling lawyers. OK.

Ms. TOMPKINS [continuing]. Those lawyers doing that——

Dr. FLEMING. So let me move on, because I am going to run out of time here.

Ms. Tompkins, can you also confirm that the President has not asserted executive privilege over any of these documents?

Ms. TOMPKINS. That privilege has not been asserted, but there is the deliberative process privilege, and a Federal District Court has confirmed that that is a valid privilege to assert in the face of a subpoena.

Dr. FLEMING. But it has not been asserted. So what is the process—

Ms. TOMPKINS. The process has been asserted.

Dr. FLEMING. What is the process you would go through to have the President make a claim of executive privilege?

Ms. TOMPKINS. Well, that resides with the President and his communications. But that is not applicable here, and we are asserting a valid privilege, that the courts have recognized—

Dr. FLEMING. OK. Have you made a request to the Department of Justice to do that, have executive privilege?

Ms. TOMPKINS. We have not asserted executive privilege, so we have not done that.

Dr. FLEMING. And you have not requested it from the Department of Justice?

Ms. TOMPKINS. We are only asserting deliberative process privilege, which is a recognized privilege by the courts to assert—

Dr. FLEMING. OK. Has a determination been made that these documents would not qualify for protection under a claim of executive privilege?

Ms. TOMPKINS. We have not asserted executive privilege.

Dr. FLEMING. But has there been a determination made? Yes or no, that is all I am asking.

Ms. TOMPKINS. I am not sure I understand the question, but we—

Dr. FLEMING. Has a determination been made that these documents would not qualify?

Ms. TOMPKINS. They are not the type of document and memo to the Secretary—or from Director Ashe to the Secretary is not a privilege that would fall in the realm of executive privilege, so we have been focusing on deliberative process—

Dr. FLEMING. So the answer would be no, a determination has not been made. Is that correct?

Ms. TOMPKINS. I guess. We never even did a determination, because it is not applicable here.

Dr. FLEMING. Well, then, there would not be a determination, if one hadn't been made.

We really ask simple questions around here, we just ask for simple answers.

Ms. TOMPKINS. Mm-hmm.

Dr. FLEMING. I yield back.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from California, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman and the Ranking Member, for holding this hearing.

Clearly, I think we all agree that our government was developed on the principles of co-equal branches of government, and we have different roles, and one of the roles for Congress is oversight on the executive branch to fulfill part of our duties. I tend to have a mixed

feeling on how well we, as Congress, provide that role over the time that I have been here. I think it is very serious, and I think it is something that we should do better and do more of.

But frankly, increasingly and disturbingly, I think politics too often gets in the way of this oversight role. And I would say that on both sides.

The Department of the Interior and I have a number of differences on a host of issues. But on the matter of whether or not you comply on information requests, I think you do so. I think you make your best efforts, given the demands placed upon you by this committee and by other committees. To be sure, I still have sharp differences with some of the decisionmaking that takes place within the Department of the Interior on a host of issues, but I think it is clear that these requests also have the unintended consequences of draining time of agency staff that could be used for better purposes, at least on the issues I am concerned about.

I am going to, therefore, switch to another topic that my constituents are far more interested in than this redacting issue that maybe is of importance to some of my colleagues.

Dr. Ashe, you know that the people in the San Joaquin Valley are suffering as a result of the drought management decisions made by your agency over the last 3 years. And while the smelt biological opinion may not have contributed to the water losses this year, because we had so little water after 3 years, it did, I think, have a major factor in contributing to the loss of waters last year, as much as 800,000 acre-feet. And that water could have been placed into storage that would have helped alleviate the impacts this year on drought-related communities throughout California, as far north as my colleague's district, Jared Huffman, as far south as southern California.

And we are looking at a situation in which, if we have an average year, if we have an average of most of the Valley, we will still have a zero allocation, based upon the impacts related to the implementation of the operation of the projects.

So, I would like to ask you, as a matter of good public policy, do you think that, after spending millions of dollars for the restoration of species recovery, which I support, but, as I said yesterday, sadly has not been very successful, that when you look at sampling of populations of various species, is it good public policy that environmental managers, who you oversee, should be held to the same standards of management of other managers that, in demonstrating wise and effective use of their resource? Is the answer yes or no, Director Ashe?

Mr. ASHE. Yes.

Mr. COSTA. OK. So, what is your agency doing to demonstrate the benefit from the investment of the money and the water that has been spent over, pick any time, last 10 years, last 20 years, it is in the billions of dollars of restoration fees and funds for the investment of that money and the water that has been used to try to, in fact, restore those species, and the unintended consequences, which has caused such harm to other parts of California, obviously, a lot of constituents that I represent?

Mr. ASHE. I appreciate that question, Congressman. I think that, I guess I would say our people have very well invested that time

and resource. We certainly have a biological opinion, as you know, the implementation of which is controversial. But it has supported the——

Mr. COSTA. Well, it is controversial, but I mean we are not going to resolve the differences here today.

Let me move on to another issue that I just think points out the contradictions, it seems to me, anyway. Two weeks ago, the Bureau of Reclamation reversed an earlier decision and released 25,000 acre-feet of water in the Trinity system to benefit fall run salmon over the Lower Klamath. It was purportedly done to prevent an outbreak of a disease, I understand that. Unfortunately, the release caused the death of a number of Kokanu salmon in the Lewiston Reservoir.

It seems in that instance a value judgment was made by your agency personnel to an intrinsic value of one species over another. How do you wage that, you make those judgments? Thousands of fish were lost.

Mr. ASHE. Well, the judgment in question was made by the Bureau of Reclamation to release water. Our people have been providing technical advice to the Bureau of Reclamation. And, as you point out, it is a very difficult decision, because we have fish coming up the Klamath, and scientific information that those fish are under severe stress and showing the signs of disease and——

Mr. COSTA. And the case of one species over another?

Mr. ASHE. Well, it is. It is a complicated management scenario. Obviously, people that are on the ground, dealing with the situation day to day have to be able to make those decisions, and they are difficult and challenging decisions to make.

Mr. COSTA. My time has expired, Mr. Chairman, but I would also, as a follow-up, like to incorporate how water supply impacts your consideration of this valuation.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Arizona, Mr. Gosar.

Dr. GOSAR. Thank you, Mr. Chairman, and thank you, Director Ashe, and Solicitor Tompkins, for talking about the rule of law, and how it applies.

So, I am going to deviate, just like my colleague on the other side did. So, Mr. Ashe, how many species has the Fish and Wildlife Service proposed to list as endangered during the tenure of President Barack Obama?

Mr. ASHE. I don't have that information with me——

Dr. GOSAR. Let me set this straight, since we are limited on time, 107 different species, particularly 23 in Arizona.

So let's go to the second question. How many species does the Fish and Wildlife Service propose to list as endangered by 2016?

Mr. ASHE. Again, I don't have——

Dr. GOSAR. Well, let me answer the question for you again. You have the mega-settlement of 779 species designated in critical habitat in 50 states and Puerto Rico. Most of those will be, probably not all.

Mr. ASHE. But that is not a proposal. That is not a proposal.

Dr. GOSAR. It is a mega-settlement, so——

Mr. ASHE. But it is not a proposal.

Dr. GOSAR. No, the thing about it is we have seen the tendency. So pretty much most of those will go through.

Does the Fish and Wildlife Service always perform an economic impact analysis before designating critical habitat in a listing of endangered species?

Mr. ASHE. Yes.

Dr. GOSAR. Really? Wow. So then why did you tell Chairman Hastings and Subcommittee Chairman Bishop in a meeting 2½ months ago that the Fish and Wildlife Service does their listing decisions based on science, not economic impact?

Mr. ASHE. A listing decision is based on science, and we cannot consider economic or other effects—critical habitat, which was your question. We do consider economic and other factors associated with that decision.

Dr. GOSAR. I am just going to fast-forward then, because this gets fun.

So what is the total economic impact, and how many jobs will be killed as a result of the 107 different species that have been proposed since 2011?

Mr. ASHE. Again, when we make listing determinations we do not and cannot, under the law, look at economic effects.

Dr. GOSAR. But you also have to look at it as in the designation, do you not? You are required by, let me repeat, for Section 4(b)2, the Endangered Species Act, you are required to.

Mr. ASHE. [No response.]

Dr. GOSAR. Yes, you are. So—

Mr. ASHE. No, I mean, again—

Dr. GOSAR. I guess you are not an attorney, but she is, and that is probably the law. I am not an attorney, either.

Mr. ASHE. When we designate—

Dr. GOSAR. I am really fascinated by this aspect. I am getting to a point here that is very specific to my area.

So why did the Service fail to hold a public comment period, consult with states and other local stakeholders, or do an economic impact statement prior to releasing the Strategic Hatchery and Workforce Planning Report last November?

Mr. ASHE. The Strategic Hatchery Workforce planning process was an—

Dr. GOSAR. Planning Report last November.

Mr. ASHE [continuing]. Was an internal process to consider how we would react.

Dr. GOSAR. But, you know what? It fundamentally changed, the National Fish Hatchery System, did it not?

Mr. ASHE. It did not, because we have not had to implement—

Dr. GOSAR. Oh, it didn't? OK, so let's go back to that. You said it didn't.

So, last October the Fish and Wildlife Service ceased production of Rainbow Trout at the Willow Beach National Fish Hatchery citing water line failures. At the time, the Agency stated they didn't have the \$1.5 to \$8.5 million to repair the broken water supply line. Recent engineering reports indicate that these estimates were a gross exaggeration, and the broken water line could be fixed for as little as \$100,000. Seventeen hundred jobs and a \$75 million

economic output associated with Willow Beach are at stake in Mojave County, Arizona.

Does the Agency plan to appropriate money to fix the water supply line?

Mr. ASHE. Our people have been meeting with the state and—

Dr. GOSAR. Yes or no? It is an easy question. Yes or no?

Mr. ASHE. It is not an easy question.

Dr. GOSAR. It is a very easy question.

Mr. ASHE. It is not an easy question.

Dr. GOSAR. OK. Then explain to me. Did the agency consider the jobs and associated impact before terminating this program?

Mr. ASHE. We did not terminate—

Dr. GOSAR. Yes, you did.

Mr. ASHE. Congressman, we had a catastrophic failure in the water supply for the hatchery. We did not—

Dr. GOSAR. Oh, wait a minute. Catastrophic? It is \$100,000, and these are engineers that have sat down and showed your engineers exactly what goes on in regards to this water—

Mr. ASHE. That \$100,000 estimate is completely false. It cannot be—

Dr. GOSAR. Sir, I want to remind you, think about what you are saying here.

Mr. ASHE. I am.

Dr. GOSAR. It has nothing to do with the \$100,000. It has everything to do with the \$100,000. Your estimate was pathetic. The engineers that looked at this over and over again said that you are looking at this in a whole different light.

Mr. ASHE. Mr. Labrador [sic], let me get this back—

Dr. GOSAR. It is Dr. Gosar, by the way.

Mr. ASHE. We are working with the community to see how we can address the operations at that fish hatchery. And if we can do it, and if we can make the engineering work, and if we have the resources, then we will open the facility. But it is also the possibility that we may not be able to, and we are also working with the state and the community to find out how we can produce those fish, because it is the fish—

Dr. GOSAR. So you are going to—let me ask you because my time is limited. So we will go back to Rainbow Trout in that fish hatchery?

Mr. ASHE. We are doing everything we can do—

Dr. GOSAR. Yes or no?

Mr. ASHE [continuing]. To try to get to that place.

Dr. GOSAR. Yes or no, Rainbow Trout in the—

Mr. ASHE. We are trying to get to that place.

Dr. GOSAR. Thank you.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from California, Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman. Director Ashe and Ms. Tompkins, thank you for being here. Let me say something that no one has said so far. Thank you for your service, and thank you for your patience in sitting through a rather surreal hearing, where you are accused, where every time you start to answer a question you are interrupted, spoken over. It is really embarrassing, frankly, what passes for oversight sometimes around here.

And it does seem to me that this committee sometimes would rather have the issue than the information. A perfect example of that is the fact that you have produced summaries of a broad set of investigations involving these migratory bird protection violations. You have offered to provide in-camera reviews and even full case files if the committee had any interest in really going deep and understanding these summaries. And so far, the Majority has not expressed any interest in any of that.

So, again, they would rather have the issue than the actual information. This is, indeed, about optics and fighting about things, rather than getting to the bottom of them, and I apologize for that.

It seems that we have found our way to revealing at least one scandal, though. It doesn't involve you, it involves this committee. It involves the information that the Democratic staff has produced: 11 subpoenas so far, 37 letters, 16 distinct topics covered, 125 Fish and Wildlife Service employees working full-time responding to a March subpoena, 34,000 hours, 60,000 pages of documents produced, \$2 million spent by the Interior Department, all responding to these fire drills that this committee puts you through. And, at the end of the day, zero scandals uncovered. So the scandal is, in fact, the search for scandals.

I want to pick up where my colleague, Mr. Costa, left off, because we have been politicizing your efforts to do your job and protect fisheries, you know, the Trinity River, and elsewhere, and it was mentioned that some Kokanu salmon in Lewiston Lake actually turned up dead in conjunction, at least, around the same time that flows were released into the Trinity River. Let me just ask you about those Kokanu.

Is that a native fish that has either tribal trust or ESA protections?

Mr. ASHE. Not to my knowledge.

Mr. HUFFMAN. You are correct, it is not. It is a put-and-take fishery. It is a hatchery production fish that is put in there to catch. We don't like fish kills in any situation. But when faced with a choice of saving ESA-protected and tribal trust-protected and commercially valuable salmon in the Lower Klamath, in the Trinity River, it is really no choice at all, you did the right thing, and there is nothing at all controversial about the release of those flows.

I want to change subjects and ask Solicitor Tompkins about something. Solicitor, as you know, the drought in California is putting a lot of stress on water managers and everyone who relies on healthy rivers. I have made several inquiries to the Bureau of Reclamation about the Trinity River Division Act, a 1955 law that directs the Secretary of the Interior to release 50,000 acre-feet annually from Trinity Reservoir to make available for Humboldt County and downstream users.

In an April 14 letter to me, the Bureau reported that the Solicitor's Office had given legal advice on the matter, but they asserted the attorney-client privilege. Now, based on my reading of the law, and my understanding of this situation, I have reason to believe that that legal advice actually says what I think it should say, that the 50,000 acre-feet must be made available to Humboldt County and downstream users. But it has been held secret and won't be released.

So, I would like to know why this opinion can't be released to me, to other Members of Congress who have asked for it, to Humboldt County, or to the Hoopa Valley Tribe. And I want to also, in my remaining time, ask you about the litigation that has broken out for a second year in a row, involving releases in the Trinity. I believe it was very important to develop the Department's and the Bureau's line of authority to manage that water and release that water, and that the 50,000 acre-feet belonging to Humboldt County and downstream users is critical to defending that litigation. It may not be popular with the Westlands Water District, but we need to know what is in that legal opinion, and I want to ask you to speak to that.

Ms. TOMPKINS. Thank you, Congressman. I am happy to——

The CHAIRMAN. Turn on your microphone.

Ms. TOMPKINS. Move the microphone? There, OK. Thank you for that question.

As you know all too well, the situation in California is very dire, and there are a lot of difficult choices the Department has to make, with few options. It is true that my office provides legal advice to the Bureau of Reclamation on the Trinity Act that you refer to. In terms of the scope of the Bureau's authority, it is discretion whether the law sets forth mandatory requirements for Bureau of Reclamation or if there is some flexibility in the law. And my office has provided advice to the Bureau, that is correct, there is legal advice in a written format.

But at this time, as I sit here today, I do not have the authority to waive the attorney-client privilege to provide that memo. But what I can say is the Bureau of Reclamation, along with the Fish and Wildlife Service, is looking carefully at these issues about future planning, and how we approach these decisions in situations of drought or otherwise. And as they develop decisions, to the extent any legal advice informs those decisions, they will be made part of the Record of Decision, and a rationale will have to be given.

So, to the extent they are relying on that advice, it will be something that comes to the fore through that process—excuse me.

The CHAIRMAN. I would ask the gentlelady—yes.

Ms. TOMPKINS. Sorry.

Mr. HUFFMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Yes. I think maybe Mr. Huffman has uncovered another scandal here that we weren't aware of.

Ms. TOMPKINS. Sorry. And sorry, sir, I didn't hear your gavel.

The CHAIRMAN. Well, I try——

Ms. TOMPKINS. Feel free to hit it harder.

The CHAIRMAN. I try to give some flexibility when you are——

Ms. TOMPKINS. Yes.

The CHAIRMAN [continuing]. When you are in there. But I—since Mr.——

Ms. TOMPKINS. No problem.

The CHAIRMAN [continuing]. Huffman uncovered another scandal, I wanted to hear more about it.

Ms. TOMPKINS. OK. Well, fair enough. But thank you.

The CHAIRMAN. The Chair recognizes the gentleman from North Dakota, Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman, and thank both of you for being with us today, and for your testimony.

Mr. ASHE, just out of curiosity, do you think that the area of inquiry about the costs of the sage-grouse rule, some of the others that may not be under your jurisdiction, are legitimate areas of inquiry by the committee? Are these reasonable questions asked?

Mr. ASHE. It is a reasonable question to ask. And if you asked me how much the U.S. Fish and Wildlife Service is spending on its process of listing the sage-grouse I could give you an estimate, and I could do that in pretty short order. So, if that is what the committee is interested in, I can get the committee that information.

I would say the problem, the issue we have right now, is the committee is making a very broad request that is draining my time and capacity to be responsive.

Mr. CRAMER. Well, one of the things that you said earlier that intrigued me was that the responses to subpoenas require a sense of urgency, or a quick response, as opposed to a FOIA response, which you have a little more time, and you can provide a more thorough response to.

But it is intriguing to me that more work goes into redacting a document than it does to just simply photocopying it and have an intern run it over. So I am a little confused by the timeline comparisons here. Wouldn't it be quicker to be transparent, rather than the other way around?

Mr. ASHE. Actually, the majority of the time is involved in collection of the documents, and that is what drains my field resources, because to get these documents I have to go to my field biologists, my law enforcement officers. They are the ones who have to produce the information. Then it is a process here in Washington, DC, where we go through the process of considering redaction.

And so, the expense for me, in compliance, is the operational field expense.

Mr. CRAMER. Again, though, we are talking about documents that have already been provided to somebody else unredacted, and you had to go through the work of redacting it later. So it seems to me that the work is in not being transparent. The work is more in not being transparent than being transparent.

But I want to get to one other area of inquiry because I am intrigued about the priorities set here. And I suppose this is going to seem very politically incorrect, but no one has accused me of political correctness, and there are, believe me, no people love the elephant more than the people on this side of the room. But what is it about the African elephant and our role as the international police force to protect the African elephant that trumps issues back here, if we are, in fact, in constrained budgetary times?

In other words, you have used this illustration a couple of times, and I know it is a big deal, I don't want to diminish the African elephant. But, we have limited resources, perhaps domestic issues. At least to a landowner in western North Dakota, settling the sage-grouse thing is a little more important. So, could you help me understand your prioritization?

Mr. ASHE. I would say sage-grouse is definitely a priority for the U.S. Fish and Wildlife Service. And I would say several months ago in Harney County, Oregon, we signed candidate conservation

agreements covering nearly 300,000 acres with private lands, and we had a rancher in Harney County, Oregon stand up and say what is good for the bird is good for the herd.

I use the elephant as an example. That is a responsibility of the U.S. Fish and Wildlife Service which we cannot and should not shirk. But, you know, sage-grouse is a substantial priority for us. And right now, one of the limiting factors in working with private landowners is the inability to put enough people in the field to duplicate what we are doing in Harney County. And those are the same people. If I have a biologist in my Lacey field office who is spending their time producing documents, they are not out in the field, working with ranchers to develop candidate conservation agreements.

And so, I use the elephant as an example. Sage-grouse is an equally relevant example.

Mr. CRAMER. I have nothing further. I would yield back.

The CHAIRMAN. The gentleman yields back his time. The Chair recognizes the gentleman from Pennsylvania, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman, and thank you, Director Ashe, and Solicitor Tompkins, for being here.

Prior to coming here to Congress I served as a courtroom trial attorney for 26 years. I understand the importance of thorough responses to subpoenas, and I also believe in the transparency of government. I think it is an essential part of our democracy. This committee is responsible for ensuring that the legislation that we enact is properly enacted and implemented by the administration over the past year-and-a-half.

The Chairman has requested information of and subpoenaed the Department of Fish and Wildlife on numerous occasions. It is my understanding the Department has gone to extraordinary lengths to comply with these requests, providing this committee with over 5,500 documents, totaling more than 60,000 pages, at a cost of over \$2 million to the American taxpayer.

I do applaud the Department's attempt to comply with the Chairman's requests to the utmost of your abilities. Timely and thorough responses to information requests are essential to Congress's ability to conduct our oversight responsibilities. But I am concerned with the cost of all of this, costs of compliance, given the agencies have already severely constrained budgets and we have to carefully weigh the costs and benefits of these investigations and make sure that we are not wasting taxpayer money.

I do agree wholeheartedly with my colleague, Mr. Huffman, when he says this is all about optics. You know, Americans are sick and tired of the inaction in the U.S. House of Representatives. And a big part of what we are doing that leads to this inaction is the drumming up of phony scandals. And it is only fitting that we have the Director of the Fish and Wildlife Service here, because the fishing expeditions are what we are talking about here today.

And I do have some questions. Ms. Tompkins, for you, first. Our Ranking Member has listed at 34,000 as the number of hours spent by Department of the Interior personnel responding to the Majority's document demands, 34,000 hours by Federal employees. Is that more or less correct?

Ms. TOMPKINS. It is an estimate, but it is our best estimate of the time that is spent, that we have had to devote to this undertaking, yes.

And, if I may add, it doesn't include a lot of the other hours for interviews and meetings up here with members of the committee, briefings that we have provided, as well, and hearing preparation.

Mr. CARTWRIGHT. And you, Director Ashe, you have produced more than 11,000 pages of documents to this committee on the Service's enforcement of migratory bird and eagle protections. Have you made every effort to comply with the Chairman's subpoena?

Mr. ASHE. We have made extraordinary effort, and we continue to work with the committee, and we have offered our continuing cooperation to try to better refine the committee's need for information and see if we can be more responsive.

Mr. CARTWRIGHT. Good. And you have provided summaries of case files for migratory bird and eagle investigations instead of the entire contents of some of the files. Did you do this because you are trying to hide something?

Mr. ASHE. No, we did that to, again, try to give the committee a kind of sense for what the substance of a file would be so that, again, they could further refine questions, and we could provide more specific information upon—

Mr. CARTWRIGHT. And I understand you are willing to provide in-camera review of full case files, if the committee expresses an interest in that. Has the Committee Majority asked for an in-camera review of any of the full case files?

Mr. ASHE. To my knowledge, they have not.

Mr. CARTWRIGHT. But if they did, you would be willing to work with them?

Mr. ASHE. We have offered complete access to all closed law enforcement files.

Mr. CARTWRIGHT. Now, you have also provided data on enforcement actions involving migratory bird and eagle protections. The Majority here has alleged that you are engaging in preferential enforcement in favor of the wind industry. But the data would indicate that, proportionately, you are actually pursuing more cases against the wind industry. Has that data been doctored in some way? Am I missing something?

Mr. ASHE. No, sir, you are not missing anything. I did the quick math last night when I was sitting there. We are currently investigating 21 cases against the oil and gas industry. Based on the number of oil and gas wells and the number of wind turbines, if we were taking a proportionate approach, we would be investigating a little more than one case for the wind industry. We are actually investigating 17 cases, and so that is not preferential.

I mean the wind industry is a newly emerging industry on the landscape, and so it is appropriate for us to be working with the industry to try to find out how they are complying, and, when they are not complying, work with them. And so, this is not any kind of preferential enforcement, but our people do follow the facts, and we are working cooperatively with the wind industry. We have, actually, a very good relationship with the wind industry. We have developed voluntary guidelines with the wind industry. And so I

think we are doing exactly what the Congress and the law would ask us to do.

Mr. CARTWRIGHT. Well, I thank—

The CHAIRMAN. The time of the gentleman has—

Mr. CARTWRIGHT [continuing]. Director Ashe, and I yield back.

The CHAIRMAN. The time of the gentleman has expired.

Just for the record, as the Chairman of this Committee, I have never said or implied that the reason we are looking for this is to find a bias one way or the other; we are just trying to simply find the facts on this issue.

The Chair recognizes the gentleman from Georgia, Dr. Broun.

Dr. BROUN. Thank you, Mr. Chairman. Director Ashe, just first a comment. Mr. Cramer was asking you some questions about the sage-grouse, and in your answer it was apparent to me that you have already made the determination that you are going to list the sage-grouse before you go through that process. And this bias really concerns me.

You were in my office not long ago, and we talked about two issues. One is your determination to close hunting for the elephant in Zimbabwe, as well as Tanzania, as well as we talked about the polar bear listing that the Secretary, in a stroke of a pen, listed the polar bear as being endangered, and you closed hunting, as well as even closed importation of trophies that were obtained with legal permits at that time. And I asked you to provide information to me.

Your staff, in fact, I have a copy of the email here that was sent to my office following that, and it was from Angela Gustafson to my office. Basically, you just reiterated some of the information that we already had. And I asked you to provide further information to me. In her email she just reiterated some information that you had already provided about Zimbabwe, but you have never provided anything about Tanzania, you never provided anything about the polar bear.

Again, to reiterate some of the things I said in that conversation during your visit to my office, and thank you for coming; I really appreciate your time and effort to come to my office to talk about these things. I told you about some of the wildlife management projects that I personally was involved in to try to set up some management programs for wild sheep in Pakistan and China. The Department of Fish and Wildlife closed those down when, actually, those hunting programs would have protected the wild sheep and markhor in Pakistan, the wild sheep in China.

We talked about elephants, and how the program in Namibia actually gave value to the elephants, to the local population, and how the Fish and Wildlife Service has taken what seems to me an attitude that hunting is bad, that hunting is not to be considered as part of a wildlife management program. In fact, I have a bill that will require hunting to be part of all management programs on Federal properties, except for DoD properties.

The question I have of you is what value is the elephant to the native population in Zimbabwe and Tanzania, if we don't continue hunting?

Mr. ASHE. I think that, first of all, the Fish and Wildlife Service supports the hunting tradition, and we support it domestically, and we support it internationally. We have—

Dr. BROUN. Well, that is what you have told me before, and I apologize, because I have just a very limited time here, and I have just a ton of questions.

But again, if we don't have hunting, what is the value of these animals, whether it is elephants in Zimbabwe, or whether it is wild sheep in Pakistan or China, what is the value of those animals, and why should the native population protect them, if they don't have some economic value to the people?

Mr. ASHE. I would say there certainly is value to animals beyond hunting. And we, in the United States, value wildlife, and we value wildlife that is hunted, and we value wildlife that is not hunted. And I think that is true in Zimbabwe and Tanzania, as it is true in the United States. I believe that hunting does provide an important incentive to conservation of elephant and rhino in Zimbabwe and Tanzania and throughout Africa, as hunting of mule deer provides an incentive for conservation of mule deer in the United States.

But my obligation is to ensure that trophies that come in from Tanzania and Zimbabwe can meet the enhancement requirement under the Endangered Species Act, because they are listed species, and we cannot do that because we have issues of corruption in Tanzania. We have issues related to the devastation of elephant populations in Tanzania. We have issues with the availability to acquire information from Zimbabwe, and we are trying to rectify those.

And you and I had a good conversation about that. We are working with the Safari Club International and others to try to get the information that we need, and I am hopeful that we can get that information, and will resume a trophy importation.

You mentioned Namibia, and I am a big supporter of Namibia. And, you know, we have allowed the importation of a black rhino trophy from Namibia, and I have taken great personal criticism for doing that. But I believe that it is our obligation to stand up for countries like Namibia, who have very good, very responsible conservation programs.

So, I think you and I are of one mind on the general issue. But I believe I have an obligation that right now I can't meet with regard to Tanzania and Zimbabwe, but we are trying, we are working with those governments, and with conservation organizations to try to see if we can rectify that situation. And I am happy to talk to you more about—

Dr. BROUN. Please provide that information about polar bear, as well as the other—Mr. Chairman, thank you so much.

The CHAIRMAN. The time of the gentleman has—

Dr. BROUN. And I hope we are of one mind.

Mr. ASHE. Thank you.

Dr. BROUN. And I am eager to work with you on that.

The CHAIRMAN. The Chair recognizes the gentleman from California, Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. We heard a lot in the committee earlier about optics and different rhetoric of our job with oversight, that we are supposed to be doing as Members of Congress here, and that it can get expensive. Well, if we were getting perhaps straighter answers out of various levels of govern-

ment, we wouldn't have to spend as much time on that. And so it is amazing to me to watch people apologize for the IRS or other bureaucracies that don't provide answers.

So, that said, the optics for our constituents aren't very good when we go back to the issue of the White Bluffs bladderpod, the flowering plant we are talking about found in Washington—that information about that study conducted shows it is a 100 percent genetic match for bladderpods found in abundance throughout the region. Yet that information isn't allowed to be used when making a decision on a listing, or whether it has to be protected, or anything, because of, I guess, stonewalling by the agency to do so. Why is that not allowed?

Then we come back to some other issues we talk about closer to my home here, with, once again, the valley elderberry longhorn beetle in northern California, which the delisting of that has been pending, a recommendation, since 2005. And we have spoken about this, Director Ashe. So, I would like you to follow up on that a little bit and make me current on that.

But that has been waiting since 2005 from Fish and Wildlife's own recommendation to delist the beetle. And when legal action finally forced it to the front in 2011, now, after more years of inaction, we see that the population data, the surveys being done, are too dated, they can't be used any more, which looks like a self-fulfilling prophecy, when the data gets too old and has to be redone.

But some other problems with this delisting, as well, is that one of the peer reviewers, who are supposed to be independent and unbiased, is actually a former board member of the Xerces Society, which is an extreme environmental group that recently joined the Center for Biological Diversity in demanding that the beetle stay listed.

So, it is a great amount of frustration that this process, the optics of this process, to people that need things done, whether we are talking about the Columbia River in Washington, we are talking about the river areas in my part of the State of California that need to have important key flood control levee work done that are thwarted.

You know, we wonder about what things cost, complaints about \$2 million worth of investigating. Well, these listings, or lack of delisting, costs tens of millions of dollars, or hundreds of millions of dollars in additional work, permitting, lawsuits, and other nonsense that keeps important flood control projects that protect communities from happening, from having the kind of flood control that they need, as well as water supply and water storage we need for California. So the optics aren't good for the people that have to pay for all this stuff that are living in these zones.

So, Director Ashe, could you please update me on what the plans are for, I guess, a need for an updated study on the elderberry beetle, since the self-fulfilling prophecy of the other data being too old, or the sample not being quite right, as well as people who are on the peer review board that are part of the same environmental groups demanding that they not be delisted?

Mr. ASHE. In terms of status, as you and I have spoken about before, I think, you know, we did propose to delist the valley elder-

berry longhorn beetle, and we, as we do with all of our listing proposals, put that out for peer review. We received critical comment from the peer review panel, not from one individual, but from the peer review panel. And that is the purpose of scientific peer review.

As I, you know, talked with—

Mr. LAMALFA. Sir, who picks the peers, though?

Mr. ASHE. Sometimes we do peer review internally, and sometimes we contract out the peer review. I don't know, in the case of the beetle. I will find that out for you. But sometimes we do that internally—

Mr. LAMALFA. We spoke about who the contracted people are here, and in this case here, as I mentioned, it looks like one of them, part of the Xerces Society, is also buddying up with the Center for Biological Diversity to have a—go ahead, sir, we are running short of time.

Mr. ASHE. I mean when peer reviewers are picked, I mean, we don't look at their affiliation. So I wouldn't discriminate against somebody because they were affiliated with the Safari Club or affiliated with any other organization. We look for their—

Mr. LAMALFA. Sir, the optics of that look like it is people that have the self-fulfilling goal of not having something delisted. We have been waiting since 2005 for it. We have important levee and flood control projects that affect communities negatively. If we ever got any rain again, they would be in big trouble. So don't you think there would be need for taking a look at who is on that, and are they truly unbiased?

And I will yield back, but I would like to follow up with you on that, sir.

Mr. ASHE. Thank you.

Mr. LAMALFA. Thank you.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Colorado, Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman. I would like to have Exhibit 3 put up on the screen, please. And both of you have this in your packet in front of you.

[Slide]

Mr. LAMBORN. OK. On the left we see an unredacted document that you gave to the AP in response to a FOIA request. On the right is what you provided to this committee in response to a subpoena. Do you think it is your obligation to give less to Congress than you give to the public?

Mr. ASHE. [No response.]

Mr. LAMBORN. Then why did this happen?

Mr. ASHE. We were discussing this previously. I think that there is a FOIA process, which is a separate process that is managed by different people and according to FOIA standards, and there is a process of responding to congressional documents. And so I would say there is definitely an inconsistency here, and I will attribute it to two different processes and speed and urgency on one hand.

So people aren't comparing notes when we provide these documents, so—

Ms. TOMPKINS. And I would add that there might be different reviewers on different requests. I don't know this particular issue specifically, but the FOIA request might have been of a different

scope for asking for different information than the congressional request, so that could account for some of the differences between the two.

Mr. LAMBORN. Well, I am hearing your answer, but I am not accepting it, because you say that you spend millions of dollars doing review of our subpoenas, and you have so many thousands of man-hours in doing this, and yet we have these glaring inconsistencies.

Ms. TOMPKINS. I think when you are reviewing 60,000 pages, there can be some inadvertent inconsistencies. And, again, I am not sure the scope of the FOIA here matches the scope of the congressional request. So that could also account for some differences.

Mr. LAMBORN. Well, I would have to think that the subpoena from your congressional overseers, and we are the people's representatives, we are elected here and sent here by the American public, is broader than a statutory remedy that the press has to get documents. We are talking about the Constitution here.

Ms. TOMPKINS. Yes, I would actually like to address that. FOIA has very clear statutory provisions and exemptions and things that can be invoked. The accommodation process, actually, is different, where, as I said in my opening remarks, it is a negotiation, a discussion, a balancing of our respective interests. So that is a different format. So that also could account for different—

Mr. LAMBORN. OK, let's look at Exhibit 4. And, once again, you have these documents in your packet, and you can also see them up on the screen. The one on the left is a partially redacted document that you gave to the AP under FOIA. And on the right is what you gave this committee in response to our subpoena. Basically zero information on the right, and some kind of stab at giving information to the AP on the left.

I don't see isolated issues here, I see a pattern. You are giving less to Congress than you are giving to everyone else. And, if anything, it should be the other way around, or you should be as open with everyone, as transparent with everyone, but not less transparent with your—

Ms. TOMPKINS. I—

Mr. LAMBORN [continuing]. The overseers in Congress.

Ms. TOMPKINS. Our goal is to be as responsive as we can to the committee and your requests. I think we have highlighted some of the issues that could be at play here.

In addition to that, I think you will find us open to addressing, if there is an inconsistency, point it out to us, and we will get you the information that you are entitled to under your oversight authority. So I want to be clear we are open and available to address these—

Mr. LAMBORN. Well, in that spirit, I am told by staff that there are documents we have requested—and what is the issue, again? On the Migratory Bird Act that you have given disclosure of the documents we have asked for, and have not been given by you, that you have given to a group out there in the public, and that I believe they have posted on the Internet.

Ms. TOMPKINS. Again, as I said, if that is correct, we would like to have an open channel of communication with the committee to ask specifically what you are looking for, what you want to know. The requests that we get are very broad. It ends up in us pulling

thousands of documents together, reviewing those documents for thousands of hours, and retaining documents we think, under the accommodation process, we have an interest to retain and hold in our possession.

But, again, if there are specific things that you want to know about, or that you feel that we have missed, let's talk about it, and see if we can't address it.

Mr. LAMBORN. Well, I am talking about it, and I want those documents.

Ms. TOMPKINS. Very good, I understand.

Mr. LAMBORN. This committee has issued a subpoena. We want those documents. We can't fulfill our constitutional duty of oversight without those. That is why we have asked for them.

Ms. TOMPKINS. I—

Mr. LAMBORN. And it is unacceptable that you are giving the press or outside groups more than you are giving us. And, at a minimum, I think someone should be fired over this.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Utah, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman. I am sorry Mr. Huffman isn't still here. I was going to try and take a page from his approach, but apparently that doesn't get information any faster than the other approach. Perhaps in the future we should be subpoenaing AP; they seem to have more information available than we actually have here.

Mr. Ashe, Chairman Hastings and I met with you back in June. And at that time you stated that the Fish and Wildlife Service must base its listing decisions on science, and not economic impact. And, therefore, the Service would not have done any economic analysis on the sage-grouse. In fact, you were adamant that the Service was prohibited from considering economic impacts, and you told us to go to the BLM for such documents.

The Endangered Species Act does require listings to be made solely on the basis of best science and commercial data available, but it also requires that economic impact be taken into account when designating an area as critical habitat. In fact, the Service has completed a draft entitled, "Economic Analysis of Critical Habitat Designated for the Bi-State Distinct Population Segment of the Greater Sage-Grouse," and you did it on May 28—that is 2 days before the committee sent up its follow-up specifically requesting all documents related to the analysis of economic impacts for the sage-grouse.

So, given that the Service has, in fact, released an economic analysis, I wonder if you still stand behind the statement you made in our meeting in June that the Service would not have any documents about economic impact. Were you aware that the Service had issued an analysis of what you said they weren't going to do when you met with us in June?

Mr. ASHE. We do not and cannot consider economic or other issues in the context of a listing determination. We do economic analysis and consider economic and other issues in the context of determining critical habitat.

Mr. BISHOP. That is what the law has. But my question was, did you know you had the analysis when you met with us and claimed you weren't going to do the analysis?

Mr. ASHE. I believe the committee's request for the Fish and Wildlife Service for information was on the greater sage-grouse. The bi-state sage-grouse is a distinct population segment, and it is a whole different listing proposal.

And so, if the committee had asked for information on the bi-state, we would have given you information on the bi-state.

Mr. BISHOP. When you met with us—I will try this one more time—and you said you weren't going to have an economic analysis, you already had one. Were you aware that you had one when you told us you weren't going to do it?

Mr. ASHE. We were talking about the greater sage-grouse, not the bi-state. If you had asked me about—yes, I was aware. And if you had asked me about the bi-state, I would have given you information on the bi-state. You asked me about greater sage-grouse.

Mr. BISHOP. Well, this is the bi-state population of the greater sage-grouse, but it is still about the sage-grouse, and it is still something that we requested, and you didn't say you had it.

Mr. ASHE. We have gunnison sage-grouse, we have bi-state—

Mr. BISHOP. And you are playing around with all of them; I am very grateful for you doing that.

Can you explain why the Service has not provided any documents related to the development of this economic analysis when it clearly would have been responsive to the committee's original request and follow-up request?

Mr. ASHE. I don't believe it is responsive to the committee's original request. The committee asked about our listing documentation related to the greater sage-grouse. Now, again—

Mr. BISHOP. All right. Will you commit, then, to provide these documents? Because it is essential to it, and it is relevant to it. Will you now commit to provide these documents and related studies, and any other being developed by the Service on the economic impacts of sage-grouse? Will you commit to doing that?

Mr. ASHE. I am happy to provide you with our draft economic analysis on the bi-state population of the greater sage-grouse, yes.

Mr. BISHOP. Well, AP has that, and your web service does it. Are there any other documents that are related to it that you will commit to actually providing for us?

Mr. ASHE. Mr. Bishop, again, my desire is to provide the committee with information that it requires to conduct its oversight responsibilities, so yes. But again, it becomes piling on at some point. I am trying my best to—

Mr. BISHOP. Mr. Ashe, if you do it the first time, and do what we ask the first time, it wouldn't be piling on. But I appreciate your commitment to doing that. I look forward to receiving the analysis. I look forward to receiving all the documents that go with that analysis, especially because it was there. And I feel very frustrated that I don't think it was necessarily totally forthcoming when we met with you in June to find that this document was actually out there at that time.

But I appreciate you doing that. I look forward to something coming back here. My time has expired.

The CHAIRMAN. The time has expired. I have a few more questions, so we are going to do another round. If other Members have questions, we will follow up with that.

Solicitor Tompkins, what position does the Solicitor play in redactions?

Ms. TOMPKINS. Thank you, Chairman, for the question. We provide review, legal review, of the documents that have been compiled as responsive to your request. So we conduct legal review of those documents and identify if there are any materials within those documents to be redacted based on confidentiality—

The CHAIRMAN. So could I infer from that that if Director Ashe were to say this is what he ascertains that Congress is asking, and he sends it to you for legal review, and he thinks it is OK, and a redaction happens, it comes from your office?

Ms. TOMPKINS. We do a legal assessment if there is any basis to redact, but we do coordinate with the bureaus and offices, as well, in terms of understanding what the information is, so that we understand what we are redacting.

The CHAIRMAN. OK. I just, to follow up with what Mr. Lamborn said, I mean, what you just said does not answer the question that Mr. Lamborn was asking you when you had two documents side by side. I am sorry, I am with Mr. Lamborn on that.

Director Ashe, Mr. LaMalfa brought up the bladderpod. I have, as you know, I have an interest in that, and we had a conversation in my office regarding that. We wanted to talk to some people lower level, you said you didn't want to make them available, but you would make available a Mr. Berg, who was involved in all of that. So our staff did talk to him. And, of course, the issue of DNA came up.

Now, what disturbed my staff when that decision came, or when that issue came up is that Mr. Berg told the committee staff that the DNA study was—and I will take a quote from what they heard from him—“dead on arrival,” and that he was looking for peer reviewers to confirm that view. So, it raises two issues.

First issue, DNA, at least in courts, I am not a lawyer, seems to be a pretty strong piece of evidence. Just last week, for example, two inmates on death row, I think in North Carolina, were exonerated because of DNA.

And then the second issue it brings up again, what Mr. LaMalfa brought up, is the selection of peer reviewers.

But my question to you is this. Does the Service have a bias against DNA? Or is this the view of just the one employer, Mr. Berg?

Mr. ASHE. Two things. First of all, I have spoken to Ken. Your letter quotes Ken as saying, “dead in the water,” and then you ascribe to him a motivation to prove that point. That was an untranscribed conversation, and—

The CHAIRMAN. Yes, it was. Now, let me—

Mr. ASHE [continuing]. He denies—

The CHAIRMAN. Now—

Mr. ASHE. He denies saying that, and denies the motivation that you ascribed to him.

The CHAIRMAN. This gets back to the point that I, that we wanted to make. One of the reasons this came up is we wanted to find

out how the decision was made on ignoring the DNA that was funded, as you know, privately by somebody else that was concerned about this.

Now, one way we could do this, of course, would have been to have brought him back here to sit where you are and ask that question. Now, I agree that it wasn't transcribed, and I agree that my staff heard that. Frankly, it doesn't surprise me that he would say he didn't say that.

But here is the underlying question, getting back to the whole issue of DNA. Wouldn't there be at least some curiosity, some curiosity, within Fish and Wildlife that, goodness, here is a study that says DNA, regardless of what a peer reviewer says, a study says that this plant is, in fact, common. Wouldn't it be a curiosity in the Fish and Wildlife Service to say, goodness' sakes, DNA seems to be something that is pretty black and white in other areas? Wouldn't we look at it much more closely?

To my knowledge, you, the Fish and Wildlife, have not done that at all with the study that was funded by those local farmers in Franklin County.

Mr. ASHE. We have done that, sir, and we—

The CHAIRMAN. When was it—

Mr. ASHE. We do—

The CHAIRMAN. And that is the information that we are asking about in our subpoenas. Why haven't we received it?

Mr. ASHE. Again, I think I am not sure what the information is you are referring to. We have provided all documents and all communications to the committee with regard to the bladderpod. We—

The CHAIRMAN. Director Ashe, all due respect, we are asking for information surrounding the decision why DNA was not acceptable. You said you did a study. We have not received that information. If we could get that information, maybe we could have another conversation. But, lacking that information, I come to the conclusion that there must be a bias of Fish and Wildlife against DNA evidence.

Mr. ASHE. Again, we have provided all documents and communications related to the bladderpod.

The CHAIRMAN. Will you go back and look and see if there is something on DNA, then, that you can provide us? Because we have asked that.

Mr. ASHE. I will go back and ask the question, but we have provided the committee with all the responsive documents on the bladderpod.

And the question of whether we consider DNA, we use DNA evidence all the time. The evidence, the study that you are referring to, was considered, was subjected to peer review, and was subject to very critical comment by the peer reviewers. Not by one peer reviewer, not by two peer reviewers, by all of the peer reviewers.

The CHAIRMAN. And we have not received, of course, that information. See, that is the frustration that we—

Mr. ASHE. That is part of our record. That information is all part of our decision record on the bladderpod. It has been—

The CHAIRMAN. So perhaps we should have the peer reviewer appear to tell us that, I guess.

I know my time is way over, and I am one that is probably more strict on that than anything else. The Chair recognizes the gentleman from California, Mr. Cárdenas.

Mr. CÁRDENAS. Well, thank you, Mr. Chairman, but—

The CHAIRMAN. Let me take it back. I apologize. This is the second round and you came in after, so I will recognize the Ranking Member. I am sorry.

Mr. DEFAZIO. Thank you, Mr. Chairman. Just back to that, you said that I am not an expert on this decision on the bladderpod, and the Chairman keeps bringing it up, but you are saying that the criticisms of the five peer reviewers of whatever this DNA sample was, are published?

Mr. ASHE. They are. They are part of our decision record, the—

Mr. DEFAZIO. OK. Did the committee subpoena the decision record? Or I guess they could just get that off the Internet, right?

Mr. ASHE. Right. We provided all those—

Mr. DEFAZIO. Maybe that is why they haven't read it, because they didn't subpoena it, and they haven't looked on the Internet.

Mr. ASHE. That would be correct.

Mr. DEFAZIO. OK. Just in terms of, I am just kind of still puzzled why we are here. And we had an assertion that we are not here because of any allegation of bias. But it says here, this is from a press release, this one here? OK. Serious concerns—Obama administration implementing these laws in an arbitrary fashion, based on an undefined definition of cooperation—affected parties. The administration has repeatedly chosen to only prosecute select violations of these strict liability acts, and our goal is to get a better understanding of how and why these enforcement decisions are made, and what defines cooperation.

Can you tell me, are you choosing to only prosecute select violations?

Mr. ASHE. MBTA is a strict liability law, so we use enforcement discretion in bringing action under the Migratory Bird Treaty Act. So at one level, yes, that is selective. But we have established criteria for doing so.

As you mentioned previously, Mr. DeFazio, if we see a violation, we first speak to the violator. We ask them to correct the violation. We then go back. If they haven't corrected the violation, we issue a ticket. Then we go back a third time. If they still haven't corrected the violation, then we would refer it for prosecution. So we have a standard, a process in practice for making those decisions about enforcement discretion.

Mr. DEFAZIO. So if they comply after the first visit, no further action. If they comply after they get a ticket, no further action. But if they just blow you off, then you prosecute them.

Mr. ASHE. That is right.

Mr. DEFAZIO. OK. To the document that the gentleman from Colorado and others have discussed at great length, I would just like to read into the record what was redacted: "This seems like a lot of convoluted maneuvering to do much of what the ECPG advocates outside of permit. I've got to wonder if things would be different if we moved the ECPG document a year ago," and then another redaction is, "I am concerned," and another redaction is blah blah.

So, what is the ECPG? And is this a horribly important part of the investigation?

Mr. ASHE. It is the Eagle Conservation Planning Guidance, and it is an important document. And I think what was being expressed there was frustration that the document was a long time in coming, and people are expressing frustration about the fact that we haven't been able to get it done in a timely fashion. And I think that is true in just about any endeavor that we undertake. You would see those kinds of similar frustrations in a kind of major endeavor like that.

Mr. DEFAZIO. But is that somehow material to selective and biased enforcement? I mean you just—

Mr. ASHE. No.

Mr. DEFAZIO [continuing]. Took a long time to produce this document.

Mr. ASHE. Not at all, sir.

Mr. DEFAZIO. And then I would ask the Solicitor. I mean it is puzzling. So why would that phrase or whatever, that email that is of no significance, have been redacted? Any idea?

Ms. TOMPKINS. I haven't looked at these documents closely, so I can't say, exactly, the basis of the redaction. But often it is to protect the internal deliberations of Agency employees, so they—

Mr. DEFAZIO. Yes, but this isn't—

Ms. TOMPKINS. Yes.

Mr. DEFAZIO [continuing]. The deliberation, it is just blather.

Ms. TOMPKINS. Yes.

Mr. DEFAZIO. It is somebody sending an email saying, "Yes, we didn't get this done," and someone says, "Yes, whatever," and blah, blah. I mean it is like—

Ms. TOMPKINS. Right.

Mr. DEFAZIO [continuing]. What is—you know—

Mr. ASHE. And if I could add, I think on that issue, Exhibit number 4, what we are talking about, I think that is a good point of why this process doesn't serve any of us very well, because I think what you see here is, on the left side, a response to a FOIA request, on the right side, a response to a congressional request. And I am looking at the request. The request is for documents that concern enforcement of the Desert Renewable Energy Conservation Plan. There is no enforcement of the Desert Renewable Energy Conservation Plan, because that plan is in development. It has never been enforced.

So, I think that redaction probably was because the people that were reviewing it said it is not responsive, because the committee asked for documents related to enforcement of the DRECP. There has been no enforcement of the DRECP. So what you are seeing there is a product of, again, how the committee asked us a question, and how people are trying to respond to the question that the committee asked.

The CHAIRMAN. The time of the gentleman has expired. The Chair recognizes the gentleman from Arizona, Mr. Gosar.

Dr. GOSAR. Mr. Ashe, are you an engineer?

Mr. ASHE. No, sir.

Dr. GOSAR. I am kind of one of those micro-engineers, so things have to make sense to me. You made the comment that the

\$100,000 was kind of, per se, hogwash. So I need to deliver you six options that actually detail the pipe fixture down in the Willow Beach fish hatchery. The maximum there was \$1.1 to \$1.3 million, not even close to the \$8.5 million. This guy has an engineer's stamp. They have actually worked full-heartedly. I dislike people coming back at me stating something other than fact.

Number two is you claim the rainbow trout stocking program at Willow Beach was not terminated. Yet I am pulling up the Fish and Wildlife Service's own Web site, and it says—and I quote—"As of 2014, the hatchery will no longer be raising rainbow trout, and will focus on the work of the endangered bonytail chub and razor-back suckers, in partnership with the Bureau of Reclamation."

Seventeen hundred jobs, \$75 million are at stake, as a result of the termination of the rainbow trout stocking program at Willow Beach. The sole reason, let's go back through this, the sole reason for the hatchery was established in 1959 to offset the loss in native fisheries resulting from the construction of the Hoover Dam.

So, your Web site says nothing about a catastrophic event. Again, it says, as of 2014, the hatchery will no longer be raising rainbow trout. At the July 25 hearing your Deputy Director says, "If the pipeline is fixed, the rainbow trout program will be reinstated." Will you honor his pledge?

Mr. ASHE. If the pipeline is fixed, we will reinstate the rainbow trout production.

Dr. GOSAR. Thank you very, very much.

OK, number two. On August 11 the Fish and Wildlife Service held a public comment hearing in Arizona on the draft Environmental Impact Statement of the Mexican gray wolf. My District Director attending this hearing on my behalf. After 2 minutes she was cut off by officials within your agency that apparently didn't like the comments I had prepared to read. This is shameful.

Is it common practice for your agency to prevent or restrict public input that disagrees with the proposed listings and regulations?

Mr. ASHE. It is not practice at all, but when we are—

Dr. GOSAR. Well, it did happen. I mean there were plenty of people there. It was a packed auditorium, sir.

Mr. ASHE. It is a packed auditorium. And when we conduct a public hearing people are limited to the time available, because we have to provide time for all of the people who want to speak to speak. So there is always a time limit—

Dr. GOSAR. I am glad that you just keep doing this—

Mr. ASHE. People are told in advance—

Dr. GOSAR [continuing]. Because you—all the—fairness. It is inexcusable that the Arizona cooperative alternative was not one of the options included in the release of the draft Environmental Impact Statement for the Mexican gray wolf. This alternative was developed by 28 different cooperating agencies and stakeholder groups.

Now, while I don't support everything included in the Arizona cooperative alternative, I was encouraged the proposal was developed based on actual science and from local stakeholders. Why did your agency prevent this alternative from being considered and receiving public comment? You have five other options, why couldn't you include a sixth option? It seems common sense.

Mr. ASHE. The Arizona cooperative proposal has been conceived and developed subsequent to the publication of our proposal, and we are——

Dr. GOSAR. No, it wasn't.

Mr. ASHE. We are working with the State of Arizona. I have met with Larry Voyles 2 weeks ago, I am meeting with Larry Voyles again——

Dr. GOSAR. I just talked to Larry Voyles on Saturday.

Mr. ASHE. I saw Larry Voyles this morning, and——

Dr. GOSAR. I saw Larry Voyles on a plane right before he came here. So my comment is this was included here. And to say otherwise is disrespectful, to have that sixth option on the table——

Mr. ASHE. It is not disrespectful at all.

Dr. GOSAR. It absolutely is.

Mr. ASHE. We are working hand-in-glove with the State of Arizona, and we are considering the Arizona cooperative proposal. We are, sir, yes.

Dr. GOSAR. So we have your commitment that we are going to actually have an open debate with the sixth option on the table?

Mr. ASHE. We are. Literally, like I said, I saw Larry this morning at the Wildlife Hunting Heritage and Conservation Council meeting. I am seeing Larry the week after next in St. Louis, and we are going to sit down and talk about the Mexican wolf, and we are working with the State of Arizona hand-in-glove, it doesn't mean we always agree.

Dr. GOSAR. I agree.

Mr. ASHE. But we are working with them, and very cooperatively.

Dr. GOSAR. So I want to make sure I get this in writing one more time. So you fix the intake at Willow Beach, we are going to have rainbow trout. And I am giving you six different options that don't even come close to \$8.5 million. I mean they are working hard here.

Mr. ASHE. If we can fix the pipe. You and I are seeming to be in an argument here. And we are working toward the same objective on the hatchery, we really are.

Dr. GOSAR. Well, time is of essence. Time is of essence.

Mr. ASHE. Thank you.

The CHAIRMAN. Time of the——

Dr. GOSAR. Thank you.

The CHAIRMAN. Time of the gentleman has expired. Chair recognizes the gentleman from California, Mr. LaMalfa, if he has any questions.

Mr. LAMALFA. Thank you, Mr. Chairman. Once again, coming back to the previous thoughts on elderberry beetle in California, and the need for the delisting that has been put forward in 2005 and required legal action to enforce it in 2011, where do we stand, what are the next steps in the delisting process? And what would be the cost involved for having to do a new survey, since the peer group seemed to find issue with the way the surveys were done last time?

Mr. ASHE. I am going to have to get back to you on the timing and the cost, Mr. LaMalfa. I don't have that information in front

of me now. But we are committed to go back and get the information required.

And I guess, maybe by example, a couple of years ago we proposed to delist the grizzly bear, a very complex, controversial issue. We were sued, on four or five different counts. We won on four of the five counts, but on one we lost, which was the relationship of the effect of climate change on a key food supply for the grizzly bear. So we had to go back and do some more homework. And right now we are in the process of reproposing the grizzly bear for delisting, and we are on track to do that in the fall of this year.

Mr. LAMALFA. You had to take into account the effect of somebody's idea of climate change on a food supply source for the grizzly bear—

Mr. ASHE. Correct.

Mr. LAMALFA [continuing]. To—

Mr. ASHE. Right.

Mr. LAMALFA [continuing]. Delist it?

Mr. ASHE. To delist it. And so we have gone back and redone that, and now we are working again on a proposal to delist the grizzly bear. So—

Mr. LAMALFA. Have you disproven the climate change effect on the—

Mr. ASHE. We believe—

Mr. LAMALFA [continuing]. Food supply?

Mr. ASHE. We do not believe that that food supply is a key, so climate change actually will affect that food supply, but we believe the grizzly bear is resilient, and will utilize other available food supplies, and the science actually shows that that is the case.

And I think, with elderberry beetle, hopefully we will go back and we will do our homework, and we will be able to bring in—

Mr. LAMALFA. Can you recall for us here on what was wrong with the original survey on the elderberry beetle, discounting a timeline of it maybe being old data—

Mr. ASHE. I have a vague recollection, so I would rather not—

Mr. LAMALFA. When we talked about this, I think it was something to do with they were counting the bore holes—

Mr. ASHE. Right, the way the holes were counted, and—yes, it is a—

Mr. LAMALFA. And there was an objection by one of the four—I think on a particular bore, to the way the bore holes, it might not be an elderberry beetle, it might be other beetles.

Mr. ASHE. Right, and they argued that we could not adequately prove that, by counting the bore holes in that way, that we were not counting other types of beetles than just the longhorn beetle. So I think—

Mr. LAMALFA. You see what the optics look like for people out there waiting for levee work to protect their cities and their towns and areas?

I will jump from that. Let's talk about the yellow-billed cuckoo, which is being proposed as threatened in northern California, as well, 540,000 acres, part of which is to be designated in what is called the Sutter Bypass. This was a man-made project years ago to move flood water away from the precious Sacramento River area, where water is supposed to run.

Mr. ASHE. I have seen it, right.

Mr. LAMALFA. This is a set-back put in on Ag. land so that water could be moved during high flows. And since you can't do anything within the banks of the river, as far as dredging, or what have you, so this was done years ago to have a place to move that water.

And now, with this listing, we see that the Service is designating this flood control structure as critical habitat, where there was nothing growing in it before, when it was Ag. land. I guess if the farmer doesn't go down and cut everything down as it grows, then it can all of a sudden become this.

But this possible designation of the yellow-billed cuckoo in these areas, again, affects population centers, and will require a buildup of vegetation in a bypass. Does the Service really intend to go through—because this will have great effect on agriculture, the stabilization of the levees, as well as reconstruction of levees and maintenance, road and bridge maintenance, livestock, wood cutting, recreation. These all could be threats to the species, as designated in this proposal.

And then, on the other hand, when we look at the yellow-billed cuckoo, is that there is no real distinction between the western one and the eastern one. So this kind of comes back into the DNA test that the Chairman and I had mentioned earlier on the bladderpod found on the Columbia River.

So, again, we are coming down to the optics of just regular people out there saying, well, a cuckoo looks like a cuckoo, especially—and a bladderpod a bladderpod. And even, you know, earlier, too, with the debate over—anyway, I don't have much time already once again, but do you intend to go forward with this yellow-billed cuckoo listing, based on it being in a flood control area that has been man-made in this critical—and thereby having it curtail these activities I mentioned with agriculture and others? And you have to answer quickly, thank you.

The CHAIRMAN. Yes, quickly, Director Ashe.

Mr. ASHE. We are considering the designation of critical habitat for the yellow-billed cuckoo. And sometimes that can include man-made or man-altered structures that are providing habitat.

But I would say that is not a restriction on development. Critical habitat is not a protected area or reserved area. And we, on a regular basis, work with Federal agencies to allow projects to move forward in critical habitat. We did that with the endangered desert tortoise, and we put the world's largest solar facility in the middle of critical habitat for the desert tortoise outside of Las Vegas, Nevada. So we can and do authorize projects within critical habitat. We work with Federal agencies and local project sponsors. We are doing that all throughout California.

Mr. LAMALFA. Yes, we see the complaints from the folks on the other side about \$2 million worth of oversight, but we don't take into account tens of millions of dollars that it costs to put in solar panels or any of that.

Mr. Chairman, I yield back, thank you—

The CHAIRMAN. The time of the gentleman has expired. I have been generous today.

The Chair recognizes the gentleman from Utah, Mr. Bishop.

Mr. BISHOP. Thank you. I appreciate the Ranking Member reading into the record some redacted material, because now I see why the Department spent so much time and effort to keep that information from Congress. I get it.

Solicitor Tompkins, I would like to ask you a couple of questions about the ethics program. What was your role in developing the recusal of Steve Black?

Ms. TOMPKINS. Thank you for the question. In my office the way I have organized the management of the ethics office is that I have a deputy solicitor who is a career civil servant who manages the ethics office. And then we obviously have the director of the ethics office. And so they were engaged in handling the review of the Steve Black issues. I did not make any substantive decisions in that regard.

Mr. BISHOP. But you were responsible for that, obviously, for those under you, I am assuming.

Ms. TOMPKINS. They were charged—

Mr. BISHOP. Well, let me just put it this way.

Ms. TOMPKINS [continuing]. With following the rule of law under ethics to assess his situation, and they carried out their duties in that regard.

Mr. BISHOP. OK, which is not the same thing that I asked, but I appreciate that information.

The ethics officials informed you in late September of 2011 about the relationship here. Is that the first time you personally heard about the relationship and the possibility that Mr. Black might need to recuse himself?

Ms. TOMPKINS. It was a while ago, but that is the best of my recollection, that is the first that I became aware of the issue, yes.

Mr. BISHOP. And what was your reaction at that time?

Ms. TOMPKINS. I directed them to look into the matter and apply the ethics rules accordingly, and to work with Mr. Black to assess whether there were any ethical issues there.

Mr. BISHOP. So, did you or your subordinates that were tasked with this, did you discuss this with anyone outside the Solicitor's Office?

Ms. TOMPKINS. Outside of the Solicitor's Office on this matter?

Mr. BISHOP. Mm-hmm.

Ms. TOMPKINS. No, I did not.

Mr. BISHOP. All right, because there were several months that passed before the ethics office followed up with Mr. Black. And, according to the staff report, Mr. Black and the ethics office said the ethics office told him in February, which is after that, that he did not need to recuse himself. So are you aware of anyone on your staff that actually gave him that advice?

Ms. TOMPKINS. Gave him the advice that—

Mr. BISHOP. That he did not need to recuse himself. And this would have been in February of 2012.

Ms. TOMPKINS. Are you asking am I aware that that occurred, that that advice was given, or was I aware at the time the advice was given? I am not clear on your question.

Mr. BISHOP. Are you—OK. He was told he did not need to recuse himself in February. Are you aware if anyone on your staff gave

him that advice, if you or anyone on your staff gave him that advice?

Ms. TOMPKINS. OK, sorry. I believe the ethics director gave that advice, and it could have been in conjunction with the senior career manager. One of my deputy solicitors also gave that advice at that time. So, to answer your question, I did not give that advice.

Mr. BISHOP. Did you have any concern that Mr. Black would be involved in these matters during this time?

Ms. TOMPKINS. I had charged it with the two individuals in my office. They have extensive ethics experience to handle the issue. So I deferred to them, and was confident that they would have flagged any issues if there was any problem in that regard.

Mr. BISHOP. So then in March they changed their opinion and told him he needed to recuse himself. During that period of time, were you involved in those discussions? Were you involved with him? Did you have any concerns about what was going on? Or did you turn it over to your subordinates, totally?

Ms. TOMPKINS. My team continued to advise him. And, actually, I want to be clear. I believe, factually, the analysis changed over time as the facts evolved. And that affected the advice that was given, based on the particular facts at a given time. So it did evolve, and the advice did evolve because the facts were changing. But I didn't have any personal involvement in making that determination.

Mr. BISHOP. Can you elaborate on what you heard and what you told the ethics officials?

Ms. TOMPKINS. I was not briefed on the details of those facts and the analysis, so I only know that, ultimately, he was told to recuse because of the appearance of impropriety standard, which is not related to the more classic conflict of interest standard which deals with covered relationships, and of that nature.

So, there were some differences in the advice, based on changes in the facts, but I don't have particulars.

Mr. BISHOP. All right, Mr. Speaker, I am over by 10 seconds. I have one last question, and then I will be out of your hair forever.

Secretary Salazar issued a memo in 2009 that said, "Mere compliance with ethics requirements is not enough to fully meet our obligation to uphold the deep and abiding trust of the public places and all its servants." So I ask two last questions.

Do you think the handling of this, of Mr. Black's recusal, was handled appropriately, given the outline of expectations in Secretary Salazar's memo? And the philosophical one is why did your office wait until you started receiving actual questions about the impartiality to determine he should be recused? Isn't the standard a reasonable person test, not when a person actually starts raising questions?

Ms. TOMPKINS. So, overall, I take our ethical mission very seriously. And I believe that we have set a very high bar in the Department. I have made it a top priority, support of the ethics office elevated, and empowered that office to perform their duties. And I think that each case that comes before them has its own unique facts. And I believe that they apply the law carefully, analyze those issues carefully, and counsel our employees to ensure that there is compliance.

And I believe that they also engage in extensive training with our employees—

Mr. BISHOP. I am abusing—

Ms. TOMPKINS. They take it very seriously—

Mr. BISHOP. I am abusing everyone's time. So this can be a simple yes or no.

Ms. TOMPKINS. Yes.

Mr. BISHOP. Did you appropriately handle it? And was that the appropriate timing, after the questions were raised? Do you believe you did this appropriately? Yes or no.

Ms. TOMPKINS. My team, who I charged with undertaking this endeavor, I believe they applied the law correctly, and they monitored the situation. And, as things evolved and changed, they appropriately counseled Mr. Black.

Mr. BISHOP. That was a yes, then?

Ms. TOMPKINS. You interpret it however you would like to interpret it. Thank you.

The CHAIRMAN. The time of the gentleman—

Mr. BISHOP. She gets paid by the word, and I do that, yes.

The CHAIRMAN. The Chair recognizes the gentleman from Colorado, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. Mr. Ashe, I believe you joined Secretary Jewell out in Craig, Colorado to be able to see some of the species recovery efforts that are being made at the local state level in regards to the greater sage-grouse. But we still have a lot of concern, particularly in the State of Colorado, in terms of helping to be able to truly achieve the goal.

Your Department, your efforts, the goal is to recover the sage-grouse, right?

Mr. ASHE. Correct.

Mr. TIPTON. What is the number? What is recovery for Colorado? And I understand we could have maybe different numbers, different regions, different types of environment that they have to have. Do you have numbers?

Mr. ASHE. We don't have population numbers. We are looking at the threats to the species, and how we can address the threats to the species, the primary one being disturbance. And so we are working with the states, and we have all 11 states engaged in an effort with us, and a conversation about how we can do that.

Mr. TIPTON. Can you understand the frustration when you say, "We don't have recovery numbers"? How do we know when we win?

Mr. ASHE. Well, so, first of all, with the sage-grouse, it is not a listed species. So we would have never—

Mr. TIPTON. It is anticipated, there is obviously a move to move this to a listing.

Mr. ASHE. Right, so we don't have a recovery objective, in terms of a population goal. And so, what we are trying to do is, really, a first of its kind with the Endangered Species Act, is really work with the states to try to, which we did, to try to define the bar. And we developed—

Mr. TIPTON. Will this prevent listing?

Mr. ASHE. It can prevent a listing.

Mr. TIPTON. It can prevent a listing.

Mr. ASHE. Right.

Mr. TIPTON. On that. Now, when we are talking about working with the states, you have coupled Colorado in with 10 other states.

Mr. ASHE. Right.

Mr. TIPTON. An 11-state program.

Mr. ASHE. Right.

Mr. TIPTON. For full recovery. You just made a statement that we don't know what recovery really is, because we haven't had targeted numbers, in terms of what we need to be able to fill in. But if we had numbers, and knew that we had recovery—let's take the scenario we have recovery in the State of Colorado, but not in the other 10 states. In the event of a listing, would Colorado still have to comply with the listing?

Mr. ASHE. Well, in the event of a listing, and let's say Colorado, we could determine that Colorado had an adequate plan for conservation of the sage-grouse, then we could recognize that with what we call a special rule under Section 4(d) of the Endangered Species Act, like we recently did with the lesser prairie chicken. We could say, "All right, well, Colorado has an adequate plan for conservation, so as long as you are complying with Colorado's plan, then no need to come to the Federal Government for approval."

So that is a possibility for us if we got to a situation where the total picture was such that we had to list the bird, but we had a state like Colorado or Wyoming or Idaho that had good, effective conservation plans in place.

Mr. TIPTON. And I understand, you and I both do, we are dealing a little bit in hypotheticals—

Mr. ASHE. Right.

Mr. TIPTON [continuing]. Because in our communities there is a real concern about the potential listing on it.

Mr. ASHE. Sure.

Mr. TIPTON. What did you learn when you went to Colorado? Because I think it is always important, not only to listen, but to actually hear, and to be able to see some of the positive results that were going on there. Would you concur that the efforts in Colorado that are being made are repopulating this species?

Mr. ASHE. Yes, we saw great people, landowners, they are great stewards of the land, and are working cooperatively with our people on the ground, and with great support from the USDA, Natural Resources Conservation Service and the State of Colorado, so I saw, really, the kind of partnership and cooperative approach that it takes to conserve a bird like the sage-grouse, which is why I can be optimistic that we have the chance to get a not-warranted determination on the sage-grouse, because we have the Bureau of Land Management, the U.S. Forest Service, the USDA, all 11 states working collaboratively on that effort. So it really is an unprecedented level of effort that is going on.

Mr. TIPTON. To be able to prevent it. Do you have some concern? Because we continue to see litigation driving the issue. This is part of the court mandate that we are seeing coming down right now. You are spending a lot of resources right now, in terms of litigation coming from extreme environmental groups coming in, when we have a common attainable goal that, as you just noted, is being achieved, actually, by the states right now.

If you had those same resources to actually help recover a species, wouldn't that be a far better use of your dollars?

Mr. ASHE. Certainly that litigation is a source of frustration for us. And it is not so much that people are taking us to court, it is the fact that, oftentimes, the result of that is less conservation, or kind of a misdirection of our effort toward defending ourselves, versus doing more conservation.

So, I guess I would say, certainly as the Director of the U.S. Fish and Wildlife Service, I can be frustrated when people take me to court, but I will also say it is not just coming from the environmental community. I get sued by the real estate development industry, by hunting groups, by states, by local governments, by tribes. So there is a delicate balance there, between people's right to challenge the work and the decisions of a Federal agency like the U.S. Fish and Wildlife Service, and the kind of orderly conduct of business.

So, there certainly is a friction there. And I am not sure we are at the right place, and that certainly is something that would be ripe for consideration as we think about improvements to the Endangered Species Act, and any of the laws that we implement.

The CHAIRMAN. The time of the gentleman has expired. And I was somewhat generous on the time, but I think it was important to hear the total response.

Director Ashe and Solicitor Tompkins, thank you very much for being here today. I know sometimes the line of discussion is tense. I will just simply say that is the essence of self-government; it is supposed to be that way.

Solicitor Tompkins, one last observation. You sent us a letter yesterday regarding recusals and ethics saying I could ask, there are several names, dozens of names that were left out, I could ask you when you were going to give them, and I know you would say as soon as possible, so I will just simply say this. We expect to get the recusal documents on Ms. Water, Mr. Bean, and Mr. Bromwich, we expect to get those.

Finally, just an observation. We have heard in the past consistent defense of why the subpoenas that we have sent have not been complied with. However, today we have heard a new defense, both that our requests are too broad and costing money; and, at the same time, that they are too narrow, so that the Department is now redacting the information to do us a favor. It just seems to me that this is a lot of effort being put into not being transparent.

So, if there is no further business to come before the committee, the committee stands adjourned.

[Whereupon, at 12:10 p.m., the committee was adjourned.]