



# Public Employees for Environmental Responsibility

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Hon. Lisa Murkowski  
Chair, U.S. Senate Energy and Natural Resources Committee  
304 Dirksen Senate Building  
Washington, DC 20510

Hon. Maria Cantwell  
Ranking Member  
U.S. Senate Energy and Natural Resources Committee  
511 Hart Senate Office Building  
Washington, D.C. 20510

October 15, 2015

## **Re: Opposition to the Confirmation of Mary L. Kendall to be Inspector General at the Department of Interior**

Dear Senators Murkowski and Cantwell:

On behalf of Public Employees for Environmental Responsibility (PEER), I am writing to register our opposition to the confirmation of Mary L. Kendall to serve as the Inspector General (IG) at the Department of Interior. Our position is rooted in the track record she has compiled since 2009 while acting as the functional head of that Office serving as both the Acting Interior IG and as the Deputy IG.

In working on behalf of Interior Department employees, including both current and former employees of the IG during her tenure there, PEER has concluded that Ms. Kendall lacks the vision, integrity, and leadership skills to be an effective IG. In particular, we have found her to be:

### **1. Politically Motivated**

The mission of the IG requires it to be objective and nonpartisan. Yet, we have found the decisions by her Office to be governed by a political calculus. Her Office's reports tend to target line staff and avoid investigating actions of their superiors, especially when they are political appointees.

A classic example is when PEER filed a request in 2010 for the IG to investigate violations of National Park Service regulations that the documents we obtained indicated were committed personally by NPS Director Jon Jarvis. Rather than look into the matter, Kendall's Office declined to investigate and referred the matter back to the Park Service.

Similarly, the IG under her tenure declined to investigate numerous reports from employees within the then-Minerals Management Service that indicated a lax approach to overseeing offshore drilling evidencing. This unexplored pattern of official malfeasance later contributed to the disastrous BP Deepwater Horizon spill in the Gulf of Mexico.

The concern about the politicized nature of the Office are also shared by a sizeable segment of the investigators and supervisors within the IG. A 2012 IG staff survey indicates that many who are best positioned to know believe that the Office under Ms. Kendall was pulling punches to avoid embarrassing the administration. A key finding of the survey, which was completed by 82% of all IG staff, was the employee response to the question of whether the IG "conducts its work in a manner that is independent (free from improper influence) from the Department [of Interior]." Nearly one in seven respondents said no; more than a quarter would not say either way. Less than 60% said yes, a lower percentage than in surveys from the previous two years. Staff comments included the following:

- "I think there is widespread distrust and low morale in the organization right now. There are at least perceptions the acting IG and COS [Chief of Staff] did not do the right thing, ie [sic], improperly quashed investigations, and have not been forthright with Congress";
- "Wake up and quit trying to 'get approval' from DOI [Interior]...we have a job to do"; and
- "Be careful with how much reports get softened to avoid 'slamming' the Department in the interest of maintaining a good relationship."

These issues were brought into stark relief by a House Natural Resource Committee investigation into whether the IG skewed its own report into claims that the Obama White House and top Interior officials falsely reported that its six-month Gulf of Mexico drilling moratorium following the 2010 BP spill had been endorsed by outside experts. Internal IG emails complained its probe was improperly blunted.

In her September 19, 2012 memo transmitting survey results to staff, Ms. Kendall complained of "scrutiny from the House Resources Committee" among the factors that may have affected results. Significantly, the investigative agent who provided material to the House committee was then assigned to work in a one-person office.

To us it is also revealing that, despite claims to be objective, Ms. Kendall took the position that her office is exempt from the Scientific Integrity Policies adopted by the Department of Interior, which, by their terms, cover all DOI employees, contractors, and even volunteers. Nor would Ms. Kendall voluntarily submit her operations to the policy, contending that the work products of her Office should not be subjected to any outside review of their accuracy.

## **2. Resisting Transparency**

In the course of our work, PEER files numerous Freedom of Information Act requests. We have found that, among the federal agencies within the environmental sphere, the Interior IG is one of the least compliant with FOIA.

One case epitomizes this point: the IG Report of Investigation on Hubbell Trading Post National Historic Site in Ganado, Arizona. One of the very last authentic Indian traders was put out of business by a misguided and inept National Park Service investigation. The entire matter was referred to the Interior IG to sort out. The IG Report of Investigation was completed and turned over to the NPS in January 2008, but sat in limbo for a year and a half waiting for an NPS response. Even when eventually finalized, the IG report was never published.

At the request of the principals involved—including the IG agent who wrote the report that had not materialized—PEER submitted a FOIA request in June 2009 for a copy of the 2008 report. The IG ignored the request. PEER sued the IG under FOIA. The IG ultimately produced a copy of the report that was so heavily redacted as to be unreadable. We persisted in court for a fuller version of the report, which, after two years of litigation, was finally produced.

That IG Report of Investigation was highly critical, finding that the Park Service law enforcement program needed serious improvements in its professionalism and accountability. However, no such reforms were adopted, nor, apparently, did the IG ever follow up on its recommendations.

Even today, that IG report can only be found on the PEER website [<http://www.peer.org/news/news-releases/2011/07/27/park-service-indian-trading-post-fiasco-finally-unearthed/>] as the IG never posted what it finally was forced to produce in court.

In fact, under Ms. Kendall, the IG publishes only a tiny percentage of the investigative reports it completes. According a documents obtained under FOIA by E&E News, in 2013 the Interior IG closed 457 investigations but released public reports for only three.

In response to the reporter's inquiry for an explanation, Ms. Kendall agreed that more reports should be made public, but blamed an unwritten internal practice of only publicly releasing reports that receive three separate FOIA requests. The supposed rationale was that numerous requests would indicate public interest in the report. However, if the report is never published, who would know of its existence to request it? In addition, the IG withheld even the case numbers for more than half of the closed reports, further impeding access to them through FOIA. Moreover, given the IG's abysmal compliance with FOIA, it would not likely be released as a result of either one or two FOIA requests—unless the requestors pursued the matter in court.

By never publicly releasing the vast majority of its reports, the Interior IG under Ms. Kendall has become a whispering watchdog, playing an insiders' game shielded from public view.

## **3. Focused on Trivial and Ignoring Larger Systemic Problems**

At the same time, the IG reports that are made public tend to concentrate on relatively petty personnel matters while avoiding more serious issues with profound implications. Under Ms. Kendall, the IG has continued a trend toward trying to sensationalize low-level personal misconduct while ignoring resource management, budgeting, and staffing questions that are agency-wide in application, often with serious implications on a landscape scale.

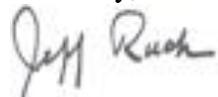
This organizational myopia within the IG makes the Office part of Interior's problems, rather than a force for solutions. In our experience, the misguided nature of the IG's focus is exemplified by the epic, more than three-year IG investigation beginning in 2010 into allegations about a peer-reviewed observational note published in a 2006 issue of the journal *Polar Ecology*. The two federal scientists whose sightings of drowned polar bears following a storm in areas of retreating sea ice galvanized public understanding of climate change in the Arctic. As a reward for this highly regarded work, the IG subjected them to numerous interrogations by criminal investigatory agents, searches of tens of thousands of emails and a meandering focus that morphed into several side probes. During the course of this ordeal, the IG:

- made four separate but utterly groundless criminal referrals against the two scientists, all of which were promptly declined for prosecution;
- conducted a criminal investigation into the journal's peer review process, seeking to transform reviewers' benign comments into evidence of fraud; and
- reopened the probe in an attempt to pressure the management of the Bureau of Ocean Energy Management (BOEM), the agency employing the two scientists, to take some sort of adverse action. This *after* the BOEM had flatly rejected the incoherent IG finding of scientific error as without any merit.

This baseless investigative expedition was conducted in a manner that seemed calculated to harass rather than find facts. Yet, under Ms. Kendall, the IG devoted large amounts of staff time and resources to it. This case probably produced more public attention than any other case the IG handled during her tenure. We would urge the Committee to examine this case as a fair litmus test of her fitness to serve as IG. We are confident that any dispassionate review of this case would convince you that her nomination for this post should not move forward.

I am happy to provide the Committee with any additional information concerning the matters raised. Thank you for your consideration.

Sincerely,



Jeff Ruch  
Executive Director