



**Public Employees for Environmental Responsibility**

2001 S Street, NW • Suite 570 • Washington, D.C. 20009 • 202-265-PEER(7337) • fax: 202-265-4192  
e-mail: [info@peer.org](mailto:info@peer.org) • website: <http://www.peer.org>

January 15, 2002

The Honorable Ann H. Veneman, Secretary  
U.S. Department of Agriculture – Room 200A  
1400 Pennsylvania Ave, SW  
Washington, DC 20250

**BY FACSIMILE [(202) 720.6314] & HAND**

*Re: Hatch Act Violations in Connection with Federal Lynx Researchers*

Dear Secretary Veneman:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER), a non-profit, non-partisan, tax-exempt organization representing state and federal employees of public land management and pollution control agencies. The purpose of this letter is to express two related concerns concerning recent calls by Members of Congress demanding the termination of U.S. Forest Service and U.S. Fish and Wildlife Service biologists involved with the interagency Canada Lynx Survey coordinated between the two federal agencies and the Washington State Department of Fish and Wildlife:

1. In calling upon your agency, as well as the Department of Interior, to take specified disciplinary action against federal civil servants, certain Members of Congress, including Representative James V. Hansen (R-UT), Scott McInnis (R-CO), Barbara Cubin (R-WY) and Senator Larry Craig (R-ID) have made prohibited recommendations with respect to federal employment in violation of the Hatch Act. 5 U.S.C. § 3303, as amended by Section 8 of Public Law 103-94, 107 Stat. 1006. See Prohibited Recommendations [Attachment A].
2. In accepting correspondence and other communications from these Members containing prohibited recommendations, you may also be in violation of the Hatch Act, which further provides that if an agency head receives such a prohibited communication, he or she:
  1. Shall not solicit, request, consider or accept and such recommendation or statement;

—and—



2. Shall return any such written recommendation or statement, appropriately marked as in violation of this section, to the person or organization transmitting same.

5 U.S.C. § 3303 (c).

In the past few weeks, news reports have surfaced concerning scientists within both the U.S. Fish & Wildlife Service and the Forest Service, as well as two Washington state employees, who allegedly submitted false specimen samples to test the quality of work performed by a contract laboratory preparing the 2000 lynx survey, an attempt to assess the current range of the species currently classified as "threatened" under the Endangered Species Act. As you know, an internal Forest Service investigation found no serious misconduct and the scientists were "counseled"—the lowest possible level of discipline. 5 U.S.C. § 7512.

The Merit System was established in federal service to end the abuses of political patronage. The Hatch Act is an integral part of Merit System protections against improper political influence from within the ranks of the civil service as well as improper political influence by Members of Congress brought upon those same public servants. Under provisions of the Hatch Act Reform Amendments of 1993, Members of Congress and Congressional employees are generally prohibited from making or transmitting recommendations to Executive Branch officials concerning any civil service "personnel action"—a term defined to include discipline, termination or reassignment. 5 U.S.C. § 2302 (a).

Recommendations made by the Members to USDA and DOI officials urging the termination of federal biologists fall within the zone of political communications prohibited pursuant to this section of law. If any federal employee risks removal because his or her scientific judgment may anger a Member of Congress, then the patronage system is truly alive and well.

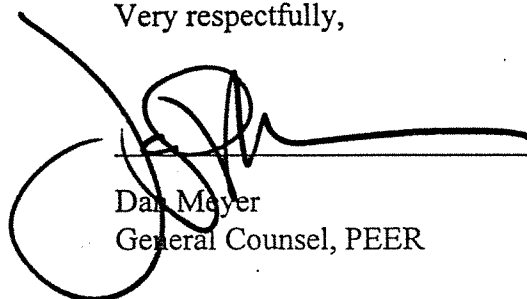
Since these prohibitions were put in place, your predecessors have been assiduous in meeting their responsibilities under this Act. For example, Senator Larry Craig has been cited for a similar Hatch Act violation involving a BLM employee in 1996 by then-Interior Solicitor John Lesh. See Associated Press, *Interior Tells Craig not to interfere in appointments*, IDAHO STATESMAN (April 12, 1996)[Attachment B].

To our knowledge, you have not acted to fulfill your legal responsibilities under the Hatch Act by returning any prohibited correspondence or communication to the source as part of a formal notification required under the Hatch Act. PEER requests you verify your compliance with Hatch Act enforcement provisions no later than date certain: February 7, 2002.

---

While there is no specified penalty for violations of the Hatch Act by Members of Congress, members of the Executive Branch are subject to fines of a maximum of 30 days suspension without pay and removal from office. See 5 U.S.C. §§ 1215(a)(3); 1506; 7326. Please advise us as to whether or when your office will discharge these specified legal requirements.

Very respectfully,



\_\_\_\_\_

Dan Meyer  
General Counsel, PEER

cc: The Honorable Gale Norton, Secretary; U.S. Department of Interior  
Members, U.S. Senate Select Committee on Ethics  
Members, Committee on Standards of Official Conduct  
The Honorable Larry Craig, Senator (R-Idaho)  
The Honorable Barbara Cubin, Representative (R-Wyoming)  
The Honorable James V. Hansen, Representative (R-Utah)  
The Honorable Scott McInnis, Representative (R-Colorado)

# ATTACHMENT A

## PROHIBITED RECOMMENDATIONS BY MEMBERS OF CONGRESS

1. DECEMBER 13<sup>th</sup> 2001 LETTER TO DEPARTMENTS OF AGRICULTURE AND INTERIOR FROM REPRESENTATIVES JAMES V. HANSEN AND SCOTT MCINNIS.

On December 13<sup>th</sup>, 2001, House Resources Chair James V. Hansen and Forest Health Subcommittee Chair Scott McInnis sent addressed to both Interior Secretary Gale Norton and Agriculture Secretary Ann Veneman calling for the termination of five federal biologists and two Washington State Department of Fish and Wildlife employees.

According to a Hansen press release, the two "questioned the validity of the inventory" and "called for the prompted dismissal of involved employees.

The press release erroneously contends that the employees "have admitted to planting three separate samples of Canadian lynx hair on rubbing posts in the Gifford Pinchot and Wenatchee National Forests. In fact, a Forest Service investigation found that while the biologists did submit control samples of known lynx hair to a federal laboratory, they did not "plant" samples in the forest, and they did so for the purpose of testing the accuracy of the lab.

2. LETTER TO DEPARTMENTS OF AGRICULTURE AND INTERIOR FROM REPRESENTATIVE BARBARA CUBIN

In a December, 2001 letter to Interior Secretary Gale Norton and Agriculture Secretary Ann Veneman, Wyoming Representative Barbara Cubin instructed the Departments of Interior and Agriculture to overturn the agencies' findings and disciplinary measures by "immediately" terminating the scientists involved.

According to a House press release, the letter from Rep. Cubin stated "While I fully appreciate the Forest Service and the U.S. Fish and Wildlife Service review and decision to reprimand and admonish the individuals responsible for such acts, I strongly believe these officials need to be terminated immediately if there is convincing evidence that they knowingly and willingly planted unauthorized samples."

Cubin continues, "It is incumbent upon Congress and the Bush administration to bring federal agency performance and accountability in line with the private sector or risk a continued erosion of the public's confidence in the system. Terminating those officials who knowingly and willingly planted unauthorized samples and conducting full investigations into this case are steps in the right direction."

In the press release Cubin, like Representatives Hansen and McInnis, perpetuates the false charge that the scientists planted hair samples in the Forests. The release states, "According to Secretary Norton, the Department of the Interior's inspector general has been ordered to investigate reports that government officials planted three separate, false hair samples of Canadian lynx, a species protected by the Endangered Species Act, on rubbing posts being used to identify lynx habitats in Washington state."

### 3. DECEMBER 19<sup>th</sup> 2001 PRESS STATEMENTS BY SENATOR LARRY CRAIG.

In a December 19<sup>th</sup>, 2001 Senate press release, Idaho Senator Larry Craig illegally instructed the Departments of Interior and Agriculture to overturn the results of the entire Lynx Management Plan and to terminate the agency scientists.

The release quoted Senator Craig to state, ". . . I expect the agencies to re-validate all the previous findings used to establish the critical habitat set-aside in the Lynx Management Plan." He also stated, "If this hoax did in fact occur—and there's clear evidence it did—people ought to be fired."

## ATTACHMENT B

Associated Press, *Interior tells Craig not to interfere in appointments*, IDAHO STATESMAN (April 12, 1996) at 2B.

The Idaho Statesman

2B - Friday, April 12, 1996

Dirk Kempthorne and Republican Rep. Mike Crapo. She said she did not want to start work in Idaho Falls on bad terms with the delegation.

BLM State Director Martha Hahn, however, said Craig aide Norman Arsenault told her to rescind her decision to hire Sita. Hahn refused, but Sita withdrew anyway.

### Interior tells Craig not to interfere in appointments

The Associated Press

IDAHO FALLS — The Interior Department has warned Republican Sen. Larry Craig to butt out of its personnel matters after claiming pressure from his staff undermined the appointment of an eastern Idaho Bureau of Land Management administrator.

Solicitor General John Leshy pointed out to Craig in a March 7 letter that political interference in career government positions is prohibited by the Hatch Act, which bars oral or written recommendations on personnel moves from congressional employees.

"I would appreciate your reminding your staff of these restrictions," Leshy wrote.

Craig spokesman Bryan Wilkes said the portion of the Hatch Act mentioned by Leshy is a recent addition to the law.

"It's a fairly new, not well-known portion of the Hatch Act that actually some members of Congress are trying to repeal," he said.

Last February, Sherry Sita backed out of her appointment as Upper Snake River District manager to stay in her job as a department budget analyst in Washington. Her decision came after a meeting with members of the staffs of Craig, GOP Sen.

The Honorable Ann H. Veneman, Secretary  
U.S. Department of Agriculture-Room 200A  
1400 Pennsylvania Avenue, SW  
Washington, D.C. 20250

The Honorable Gale Norton, Secretary  
U.S. Department of Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

The Honorable Harry Reid (D-NV), Senator  
Chair, U.S. Senate Select Committee on Ethics  
SH-220 Hart Senate Office Building  
Washington, D.C. 20510-6425

The Honorable Pat Roberts (R-KS)  
Vice Chair, U.S. Senate Select Committee on Ethics  
SH-220 Hart Senate Office Building  
Washington, D.C. 20510-6425

The Honorable Daniel k. Akaka (D-HI), Senator  
Member, U.S. Senate Select Committee on Ethics  
SH-220 Hart Senate Office Building  
Washington, D.C. 20510-6425

The Honorable Blanche Lambert Lincoln, Senator  
Member, U.S. Senate Select Committee on Ethics  
SH-220 Hart Senate Office Building  
Washington, D.C. 20510-6425

The Honorable George V. Voinovich, Senator (R-OH)  
Member, U.S. Senate Select Committee on Ethics  
SH-220 Hart Senate Office Building  
Washington, D.C. 20510-6425

The Honorable Craig Thomas, Senator (R-WY)  
Member, U.S. Senate Select Committee on Ethics  
SH-220 Hart Senate Office Building  
Washington, D.C. 20510-6425

The Honorable Joel Hefley (R-CO)  
Chair, H. Committee on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Doc Hastings (R-WA)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Judy Biggert (R-IL)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Kenny Hulshof (R-MO)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Howard L. Berman(D-CA)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Ed Pastor (D-AZ)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Zoe Lofgren (D-CA)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Stephanie Tubbs Jones (D-OH)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Gene Green (D-TX)  
Member, H. Comm. on Standards of Official Conduct  
HT-2 Capitol Building  
Washington, D.C. 20515-6328

The Honorable Larry Craig, Senator (R-Idaho)  
United States Senate  
SH-520 Hart Senate Office Building  
Washington, D.C. 20510-1203

The Honorable Barbara Cubin, Representative (R-WY)  
United States House of Representatives  
1114 Longworth House Office Building  
Washington, D.C. 20515-5001

The Honorable James V. Hansen, Rep. (R-Utah)  
United States House of Representatives  
242 Cannon House Office Building  
Washington, D.C. 20515-4401

The Honorable Scott McInnis, Representative (R-CO)  
United States House of Representatives  
320 Cannon House Office Building  
Washington, D.C. 20515-0603