



United States Department of the Interior

Office of Inspector General

Washington, D.C. 20240

May 14, 2004

The Honorable Tom Daschle
Senate Minority Leader
United States Senate
Washington, DC 20510-4103

Dear Senator Daschle:

This is in response to your November 10, 2003 letter in which you requested that the Office of Inspector General (OIG) investigate the U.S. Fish and Wildlife Service's (FWS) decision to remove scientists from a team involved in formulating a new biological opinion on the management of water flow of the Missouri River.

Your letter expressed concern about FWS' decision to replace team members shortly before the new biological opinion was due. You also expressed concern about whether the new team of FWS scientists, having limited knowledge of this issue, would be disadvantaged in its evaluation and amendment of the 2000 biological opinion.

We interviewed all key individuals involved – including the Assistant Secretary for Fish and Wildlife and Parks, the Director of FWS, as well as the former and newly-appointed team members – and reviewed dozens of pertinent documents. Because the OIG has neither the expertise nor the authority to impose its judgment on the final biological opinion, we focused on the process and the people involved as the revised biological opinion was developed and finalized.

In summary, our investigation determined that the existing FWS team had reached an impasse with the U.S. Army Corps of Engineers (Corps). To resolve this impasse, the Assistant Secretary for Fish and Wildlife and Parks, in consultation with the FWS Director, selected two new co-chairs for the team. The new co-chairs were permitted to freely choose their new team members, including members from the previous team. The Assistant Secretary directed the co-chairs to (1) follow the science, (2) consider the process as more important than the outcome, and (3) make sure the process is open and transparent. In the end, the new biological opinion – which was not substantially different from the 2000 opinion – was completed, approved internally and released to the Corps within the prescribed timeframe.

Specifically, the Corps is responsible for the management of the Missouri River. Under the Endangered Species Act of 1973, the Corps must consult with FWS to ensure that any

proposed action by the Corps does not jeopardize the existence of any endangered or threatened species. In November 2000, FWS issued a biological opinion to the Corps on the Operation of the Missouri River Main Stem Reservoir System, Operation and Maintenance of the Missouri River Bank Stabilization and Navigation Project, and Operation of the Kansas River Reservoir System. The FWS 2000 opinion stated that the Corp's proposed actions would jeopardize the endangered least tern and the pallid sturgeon as well as the threatened piping plover. As required by the Act, FWS provided a reasonable and prudent alternative (RPA) to the Corps to prevent further harm to these species. The Corps accepted the RPA presented in the 2000 biological opinion.

On November 3, 2003, the Corps requested a formal consultation with FWS, pursuant to the Endangered Species Act, based on new information on mortality rates and the creation of habitats for these species. This new information was derived from a 2001 international study, which found that the piping plover and least tern populations exceeded the recovery goals for the Missouri River but the pallid sturgeon population was declining. The FWS team did not concur with the Corp's proposed actions to resolve the declining population problem for the pallid sturgeon. The FWS team was required to issue a biological opinion on this additional information to the Corps by December 15, 2003.

The Corps and the FWS team disagreed with the others' proposed actions and reached an impasse in the fall of 2003. To resolve the matter and meet the December deadline the Assistant Secretary, Fish and Wildlife and Parks, announced in an October 29, 2003 memorandum that he would establish a new team of scientists to complete the 2003 biological opinion. The Assistant Secretary selected two FWS regional directors to co-chair the new team.

Our investigation revealed that the regional directors freely chose new team members and retained select members of the original team. The new 13-member team included 6 members of the original team. According to both regional directors, the Assistant Secretary gave them minimal guidance and maximum latitude in conducting the assignment. The Assistant Secretary told them to "follow the science wherever it leads." In addition to the regional directors, other team members we interviewed said they were not informed of any desired or pre-determined outcome regarding the biological opinion. In fact, the individuals at the working levels denied feeling pressure at all. Based on our experience in past investigations, these individuals would have been the most likely sources to provide evidence of such influence. In addition, the Department of the Interior's Science Advisor, who was aware of the decision to replace team members, opined that changing the team members did not violate any standards of scientific ethics.

Since the disagreement between FWS and the Corps had been aired quite publicly and the deadline for the new opinion was fast approaching, suspicions about the Assistant Secretary's decision to replace the scientists were not, at the time, entirely unfounded. Furthermore, the name selected for the new team of experts was "wise guys." While it may have been chosen to reflect the extensive experience and expertise of the team's members, the term "wise guys," in hindsight, contributed to the specter of suspicion.

Our investigation, however, found no evidence to suggest the Assistant Secretary's decision to remove scientists was made for any reason other than to resolve the stalemate between the Corps and FWS; no evidence that the Assistant Secretary attempted to influence the team members in any way; and no evidence that the team co-chairs and members perceived any undue influence or political pressure.

If you have any questions, please do not hesitate to call me at 202-208-5745.

Sincerely,

A handwritten signature in black ink, appearing to read "Earl E. Devaney". The signature is fluid and cursive, with a large, stylized "D" and a long, sweeping underline.

Earl E. Devaney
Inspector General