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REPUBLICAN STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 11, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland:

We are writing to alert the U.S. Department of Justice (DOJ) of potentially criminal conduct at the U.S. Department of the Interior (DOI) during the previous administration.

Since 2019, the House Committee on Natural Resources has conducted an extensive investigation into the circumstances surrounding the U.S. Fish and Wildlife Service's (FWS) decision on Oct. 26, 2017, to reverse its longstanding position regarding the proposed Villages at Vigneto development (Vigneto) in Benson, Arizona. Evidence strongly suggests the decision was the result of a *quid pro quo* between Vigneto's developer, Michael Ingram, and senior level officials in the Trump administration, potentially including then–DOI Deputy Secretary David Bernhardt (Dep. Sec. Bernhardt). By this letter, we refer the matter to the Department of Justice to investigate and consider whether criminal charges should be brought against any party for a violation of 18 U.S.C. § 201 or any other applicable federal law.

Summary of Allegations

Pursuant to federal law, developments that require the disposal of dredged or fill material into navigable waters of the United States., like Vigneto, must first obtain a Clean Water Act Section 404 permit (Clean Water Act permit) from the U.S. Army Corps of Engineers (Army Corps). The Clean Water Act permit for Vigneto was originally issued in 2006 but was suspended in 2016. The permit was then noticed for re-evaluation in 2017 under unusual circumstances.

In April 2019, now–retired FWS Field Supervisor Steve Spangle disclosed receiving a phone call on Aug. 31, 2017, in which an attorney from DOI's Office of the Solicitor directed him to reverse his longstanding decision that the Army Corps needed to formally consult with FWS pursuant to

the Endangered Species Act (ESA) regarding the then-suspended Clean Water Act permit for Vigneto. Reports later revealed that the phone call was directed by Dep. Sec. Bernhardt.

Only two weeks before that phone call, Dep. Sec. Bernhardt met with Vigneto's developer, Michael Ingram, for a private breakfast meeting at a restaurant in Billings, Montana to discuss the project. The meeting was not disclosed in Dep. Sec. Bernhardt's official calendar or travel documents.

Mr. Spangle issued an official reversal of his original decision on Vigneto's potential adverse effects on endangered and threatened species on Oct. 26, 2017, less than two months after the phone call. His reversal would effectively green light the Clean Water Act permit.

On Oct. 6, 2017, between the Aug. 31 phone call and the Oct. 26 decision reversal, three incidents occurred. First, the Army Corps formally noticed a re-evaluation of the Clean Water Act permit. Second, Mr. Ingram and several others from Arizona made out-of-cycle donations on October 6, 2017, and the days immediately prior and subsequent, totaling $241,600 to then–President Trump's joint fundraising committee, the Trump Victory Fund, and to the Republican National Committee. Third, Dep. Sec. Bernhardt held a meeting with a DOI attorney who had been instrumental in directing the reversal of the Vigneto decision.

Prior to Dep. Sec. Bernhardt's intervention in the Vigneto decision, there was consensus among FWS career officials and DOI's Office of the Solicitor regarding Mr. Spangle's original decision that the Army Corps must consider all direct and indirect effects of the Vigneto development and not just those within the immediate area to be authorized under the Clean Water Act permit. In conversations with Committee staff, Mr. Spangle repeatedly remarked on how unusual it was for the Deputy Secretary to be involved in a field-level decision; throughout his nearly 30-year career with FWS, none of Mr. Spangle's decisions had been elevated higher than the level of FWS Regional Director.

Combined, the atypical nature of Dep. Sec. Bernhardt's involvement in a field-level decision, the subsequent reversal of a decision that was universally backed by the Department's career staff, and the three incidents occurring on Oct. 6 point to official federal agency decision-making being executed in the interest of private gain rather than the American people.

The Villages at Vigneto Development

Vigneto is a proposed master-planned community near Benson, Arizona, that would cover more than 12,300 acres. The development would include approximately 28,000 housing units, as well as golf courses, restaurants, shops, over two dozen recreation and community facilities, and an accompanying network of roads and utilities. The development is proposed to be built on land

owned by El Dorado Holdings, Inc. (El Dorado), which is owned by Michael Ingram. The land and development proposal were previously under the ownership of Whetstone Partners (Whetstone).

The land on which Vigneto would be developed is located approximately two miles upland from the San Pedro River, the last major free-flowing river in the desert Southwest. The surrounding ecosystem is a fragile, yet critically important habitat for many unique species of wildlife[1] and is considered a critical corridor for millions of migratory songbirds. The U.S. Environmental Protection Agency (EPA) asserts that the San Pedro River is an "aquatic resource of national importance" **(see Attachment 1).**

Vigneto is proposed to be developed on land that covers at least 75 miles of the San Pedro River and its tributaries, which are considered waters of the United States under the Clean Water Act **(see Attachment 2).** Development of Vigneto would require pumping groundwater in significant volumes from aquifers that feed the San Pedro River. It would also require directly discharging fill material into washes (*e.g.*, small desert streambeds with important ecological and hydrological functions) of the San Pedro River at approximately 350 different locations across the project site. Because these activities would impact waters of the United States, the Vigneto development requires a Clean Water Act permit from Army Corps.

Army Corps consults with EPA throughout its permit determinations. In addition, Army Corps must either formally or informally consult with FWS as required by section 7 of the Endangered Species Act (ESA) to determine whether endangered or threatened species or their critical habitat may be affected by the Army Corps' permitting decision. If the Army Corps determines that its permitting decision may affect, but is not likely to adversely affect, endangered species or critical habitat, and FWS concurs with this determination, then the informal consultation is finished. However, if there may be adverse effects caused by issuance of the permit and any interdependent or interrelated actions, then the Army Corps must engage in formal consultation with FWS, which is a more extensive evaluation of the project and all effects on species and their habitats.

Villages at Vigneto Clean Water Act Permit History and Timeline

As the FWS Field Supervisor, Steve Spangle was responsible for leading the ESA consultation regarding Vigneto's Clean Water Act permit on behalf of FWS. Prior to his decision reversal on Oct. 26, 2017, Mr. Spangle consistently disagreed with Army Corps about the required level of consultation necessary over issuance of the permit for more than a decade. While the Army Corps believed that only informal consultation was required and sought FWS' concurrence, Mr. Spangle

[1] For example, the San Pedro River ecosystem is home to several species protected by the Endangered Species Act, including the jaguar, ocelot, western yellow-billed cuckoo, southwestern willow flycatcher, lesser long-nosed bat, and northern Mexican gartersnake.

communicated to the Army Corps that FWS did not concur, and that formal consultation was required. This non-concurrence and request for formal consultation was transmitted to the Army Corps multiple times, both formally and informally.

When there are disagreements between an FWS Field Supervisor and another agency, the dispute may be elevated to the FWS Regional Director or to the FWS Director. Although elevation was considered **(see Attachment 3)**, Mr. Spangle's position to require formal consultation on the Vigneto permit was never officially elevated, which meant that Mr. Spangle had the authority to make that decision on behalf of FWS.

Mr. Spangle conferred and collaborated with others in FWS' Arizona office, as well as an attorney in DOI's Office of the Solicitor regarding the consultation with the Army Corps. Ample evidence demonstrates that there was consistent consensus among Mr. Spangle, his FWS colleagues, and DOI's Office of the Solicitor about his decision that formal consultation is required on the Clean Water Act permit for the Vigneto project. The decision was communicated as such through numerous letters, emails, and briefing documents. The decision did not change until shortly after Dep. Sec. Bernhardt's meeting with Vigneto developer, Mr. Ingram, on Aug. 18, 2017.

Vigneto's permit history and the series of events leading up to the reversal of Mr. Spangle's decision are documented below in the following three sections: 1) Prior to the Trump Administration, 2) The Trump Administration – Prior to Dep. Sec. Bernhardt's Breakfast Meeting, and 3) The Trump Administration – Dep. Sec. Bernhardt's Breakfast Meeting and Subsequent Events.

Prior to the Trump Administration

Vigneto's previous owner, Whetstone, first applied for a Clean Water Act permit from Army Corps in or before 2004 in order to fill 70 acres of desert washes that qualified as waters of the United States. During the decision process, EPA raised concerns that the Vigneto development, as a whole, would have "substantial and unacceptable" consequences on an Aquatic Resource of National Importance **(see Attachment 1)**. EPA further stated, "The range and severity of environmental consequences resulting from the Whetstone Ranch project are substantial and unacceptable and are contrary to the goals of the Clean Water Act." In response to these concerns, Whetstone agreed to fill only 51 acres of washes and to purchase and preserve, enhance, and restore a 144-acre mitigation parcel along the San Pedro River (the "mitigation action") **(referenced in Attachment 4)**.

Around the same time, FWS Field Supervisor Steve Spangle wrote to Army Corps to assert that the effects of the entire project, not just the fill of the washes, should be analyzed in consideration of the Clean Water Act permit, including the project's "direct, indirect, and cumulative effects,

and all interrelated and interdependent activities" **(see Attachment 5)**. He argued that the groundwater pumping required for the project could adversely impact listed species and designated critical habitat.

Despite these concerns, Army Corps completed an environmental assessment in May 2006 that examined only the filling of the washes, rather than the effects of the development as a whole. Army Corps determined that the development would have "no effect" on listed species because those species did not inhabit that particular area and thus no level of consultation was required under the ESA.

On June 21, 2006, Army Corps issued a Clean Water Act permit to the Whetstone developer authorizing fill of 51 acres of washes.

Due to economic downturn **(see Attachment 4)**, the project remained on hold until 2014 when Whetstone sold the land to El Dorado and transferred the Clean Water Act permit to them. El Dorado also acquired an additional 4,100 acres of land for the development, which was now called the Villages at Vigneto. During the same year, the Northern Mexican gartersnake and yellow-bellied cuckoo, two species with potential habitat and presence in the area, were newly listed by FWS under the Endangered Species Act as "threatened."

The new species listings and El Dorado's larger proposed project area raised new questions regarding the validity of the initial Clean Water Act permit. On July 15, 2015, Mr. Spangle sent an unsigned draft letter to Army Corps recommending that they request interagency consultation with FWS about whether the new larger development may affect threatened or endangered species given the changed circumstances **(see Attachment 6)**.

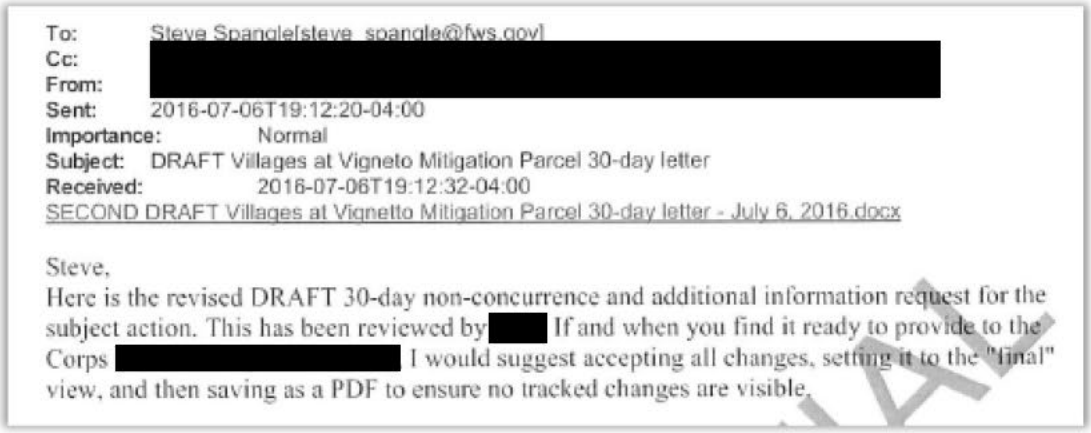
On April 12, 2016, Army Corps requested concurrence from FWS that the mitigation action, not the entire project, "may affect, but is not likely to adversely affect" the two threatened species or their proposed habitat **(referenced in Attachment 7)**. In response, Mr. Spangle sent an unsigned, draft letter to Army Corps on July 6, 2016 stating that he did not concur with their determination **(see Attachment 8)**. Mr. Spangle asserted that the entire project, not just the off-site mitigation parcel, should be analyzed for its effects. Mr. Spangle detailed his rationale, stating the mitigation parcel and the entire Vigneto development are interrelated and interdependent actions, based on the "*but for*" test.[2] They should therefore be considered one single "action area" that must be analyzed as a whole.

[2] Per background narrative (see 51 FR 19926, page 19932) for the Endangered Species Act implementing regulations at 50 CFR 402.02 (page 882), the "*but for*" test should be used to assess whether an activity is interrelated or interdependent with a proposed federal action. The *but for* standard is met if one action would not occur *but for* the federal action under consultation. In this case, the permit for the entire Vigneto development would not occur *but for* the actions requiring the permit (*i.e.*, the mitigation action). Therefore, based on the *but for* test, the

A June 28, 2016, email **(see Attachment 9)** in which a [redacted] in the Arizona office forwarded a draft of the unsigned letter to DOI's Office of the Solicitor summarizes the reasons for FWS' non-concurrence, stating,

> In brief, our opinion is that: (1) we cannot concur with a not likely to adversely affect determination for the mitigation project on its own merits; (2) the mitigation project is inseparable from the larger development project; and (3) the development project may affect threatened and endangered species.

The letter had also been reviewed and approved by the Arizona Office's [redacted] as indicated by the email below, demonstrating the office's consensus about the conclusions **(see figure below and Attachment 10)**.

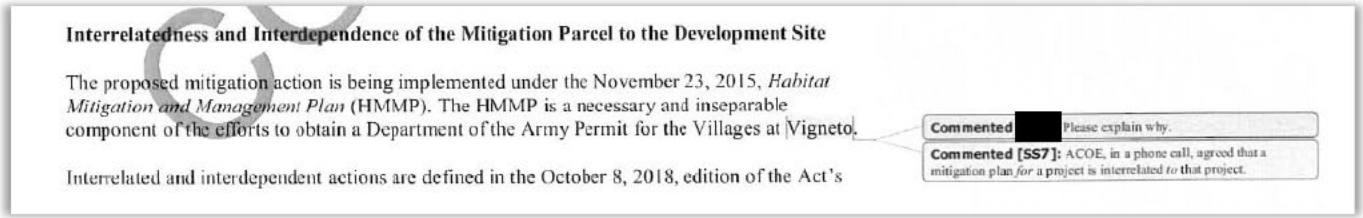


To: Steve Spangle[steve_spangle@fws.gov]
Cc:
From:
Sent: 2016-07-06T19:12:20-04:00
Importance: Normal
Subject: DRAFT Villages at Vigneto Mitigation Parcel 30-day letter
Received: 2016-07-06T19:12:32-04:00
SECOND DRAFT Villages at Vignetto Mitigation Parcel 30-day letter - July 6, 2016.docx

Steve,
Here is the revised DRAFT 30-day non-concurrence and additional information request for the subject action. This has been reviewed by [redacted] If and when you find it ready to provide to the Corps [redacted] I would suggest accepting all changes, setting it to the "final" view, and then saving as a PDF to ensure no tracked changes are visible.

Of note, a comment written by Mr. Spangle in a draft of the unsigned letter indicates that, during a phone call, the Army Corps agreed that the mitigation action and the whole Vigneto project area are interrelated actions **(see figure below and Attachment 8)**.

entire development and the mitigation action are interrelated and interdependent actions and should be considered one action area.



Given the non-concurrence from FWS, as well as a lawsuit filed against the agencies for failing to comply with the ESA, Army Corps suspended the Clean Water Act permit on July 20, 2016 **(referenced in Attachment 7)**.

After a site visit to the Vigneto project area on Sept. 8, 2016, Mr. Spangle sent official correspondence to Army Corps on Oct. 14, 2016, memorializing that FWS did not concur with their determination **(see Attachment 11)**. He again asserted FWS' position that the entire development needed to be assessed for impacts on endangered or threatened species, including the indirect effects of the development, which included the water use associated with the approximately 20,000 homes planned to be built on the development.

On Nov. 3, 2016, according to an FWS briefing document, Army Corps stated it would request formal ESA section 7 consultation from FWS on the entire project, including both the mitigation action and the entire development **(see Attachment 7)**.

The Trump Administration – Prior to Dep. Sec. Bernhardt's Breakfast Meeting

Shortly after the beginning of the Trump administration, on May 26, 2017, Army Corps effectively rescinded their agreement to pursue formal consultation on the full Vigneto development. Instead, they transmitted a letter to FWS again requesting concurrence on only the mitigation action area **(see Attachment 12)**. Their letter included a Biological Evaluation describing their determination that the actual Vigneto action area under their discretionary responsibility was less than a quarter of the size of entire development. This determination was based on their interpretation of the National Environmental Policy Act's (NEPA) scope of analysis, which was described in Appendix H of the Biological Evaluation **(see Attachment 13)**. In that case, even if the mitigation area were considered interrelated to the rest of the Vigneto project, only this new smaller action area would need to be examined. They contended that the smaller action area would not have any effects on threatened or endangered species and therefore did not need to be examined.

In addition, Appendix I of the Biological Evaluation claimed that, if necessary, the Vigneto development could feasibly proceed without having to fill the desert washes at all, thereby negating the need for a Clean Water Act permit, and the mitigation area required by the permit, entirely **(see Attachment 14)**. This version of the development that would not require a Clean Water Act permit was referred to as a "no Federal action" alternative. The existence of a "no Federal action"

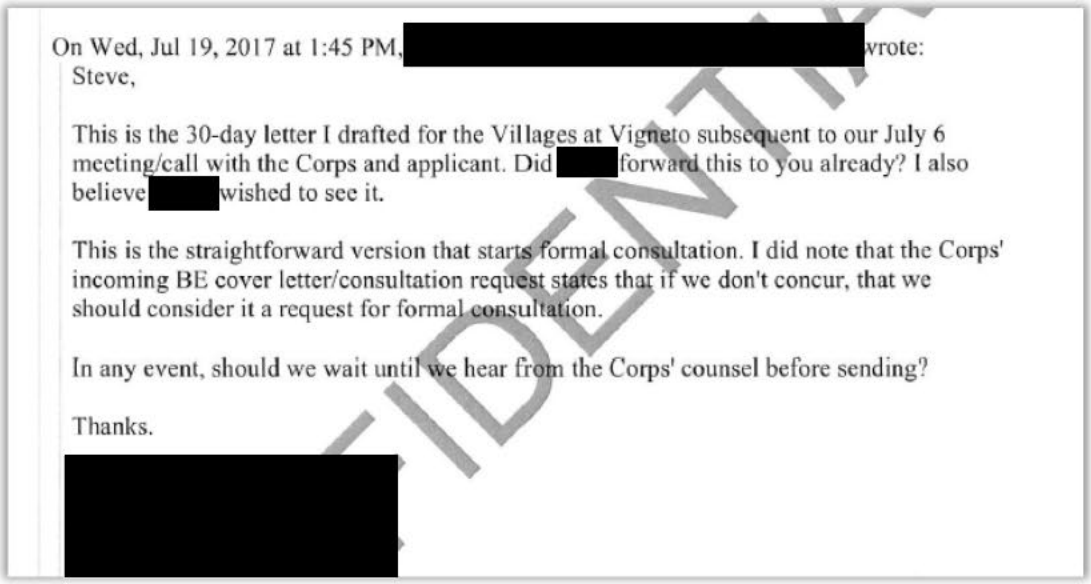
alternative meant that the development and the mitigation area no longer met the *but for* test for being interrelated activities. In other words, the effects of the development would occur regardless of whether the Clean Water Act permit, and the accompanying mitigation area, was required. This rationale, Army Corps contended, enabled them to pursue consultation on the mitigation area alone.

Mr. Spangle disagreed with the Biological Evaluation; he believed that the newly defined smaller action area described in the Evaluation was appropriate to meet legal obligations under NEPA but did not comport with the definition of an action area under the Endangered Species Act (ESA) and therefore had no bearing on FWS' legal obligation to pursue consultation for the full Vigneto project area **(see Attachment 15)**. He also did not believe that the "no Federal Action" alternative was equivalent to the original project proposal. Mr. Spangle's position at the time is detailed in an August 2017 briefing document **(see figure below and Attachment 16)**.[3]

> The Corps' May 26, 2017, view of the action area is based on the net difference between what has been proposed for development and a hypothetical "no Federal action" alternative that involves a project design that avoids fill of WUS. This hypothetical design is not what was ultimately proposed. The approach is useful for National Environmental Policy Act (NEPA) purposes, but has no bearing on the determination of an action area under the ESA. Corps staff, as well as their counsel, have reiterated their view in multiple conference calls in July and August, 2017.

To resolve their differences in opinion, Mr. Spangle and other FWS officials met with Army Corps on July 7, 2017. Both agencies agreed that formal consultation for the entire action area was required under provisions of ESA, even if Army Corps' discretionary responsibility was more limited under provisions of NEPA. The two parties once again agreed to pursue formal consultation for the entire development and FWS began to draft a letter **(see Attachment 17)** with an anticipated timeline for consultation **(see figure below and Attachment 18)**.

[3] "WUS" stands for "Waters of the U.S."



On Wed, Jul 19, 2017 at 1:45 PM, [redacted] wrote:

Steve,

This is the 30-day letter I drafted for the Villages at Vigneto subsequent to our July 6 meeting/call with the Corps and applicant. Did [redacted] forward this to you already? I also believe [redacted] wished to see it.

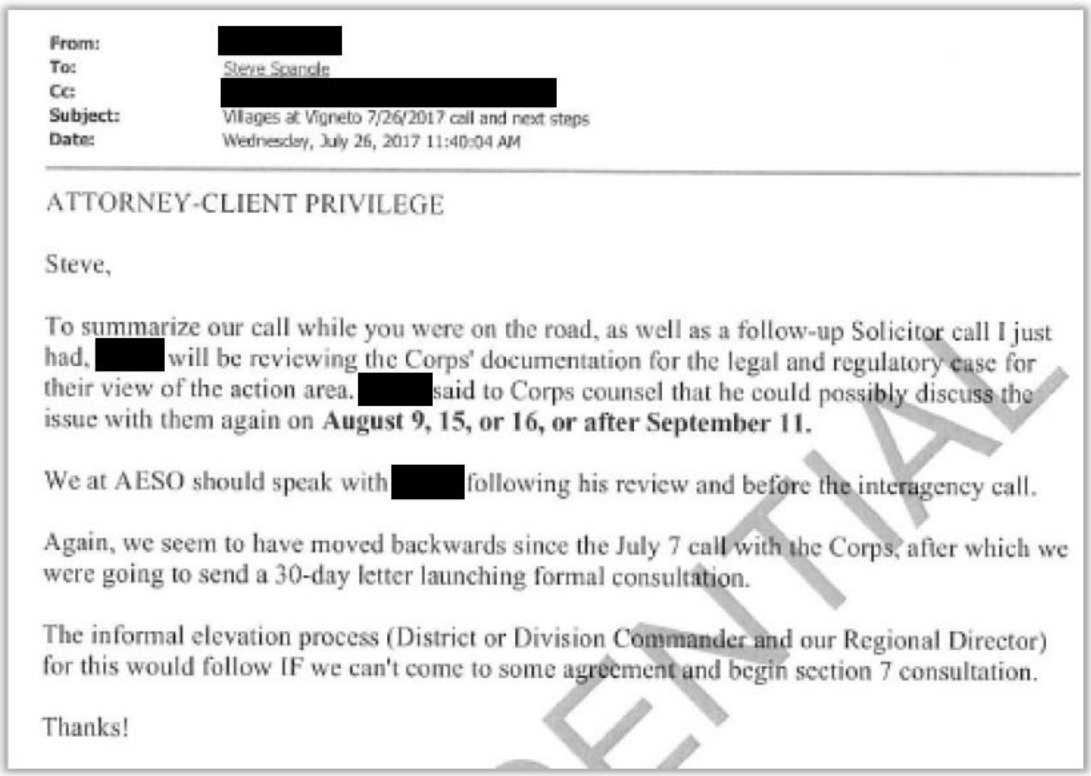
This is the straightforward version that starts formal consultation. I did note that the Corps' incoming BE cover letter/consultation request states that if we don't concur, that we should consider it a request for formal consultation.

In any event, should we wait until we hear from the Corps' counsel before sending?

Thanks.

[redacted]

On July 17, only 10 days after the call, Army Corps emailed the DOI attorney saying, "The Corps requests that we meet again very soon to discuss action area and effects with attorneys from both our agencies present . . . The critical attendees are the attorneys," **(see Attachment 19)**. On July 26, Army Corps rejected the proposal to begin formal consultation, leaving the two agencies in disagreement again **(referenced in Attachment 16)**, as evidenced by the email below in which the same FWS employee from the previous email says, "we seem to have moved backwards since the July 7 call," **(see figure below and Attachment 20)**.



From: [redacted]
To: Steve Spangle
Cc: [redacted]
Subject: Villages at Vigneto 7/26/2017 call and next steps
Date: Wednesday, July 26, 2017 11:40:04 AM

ATTORNEY-CLIENT PRIVILEGE

Steve,

To summarize our call while you were on the road, as well as a follow-up Solicitor call I just had, [redacted] will be reviewing the Corps' documentation for the legal and regulatory case for their view of the action area. [redacted] said to Corps counsel that he could possibly discuss the issue with them again on **August 9, 15, or 16, or after September 11.**

We at AESO should speak with [redacted] following his review and before the interagency call.

Again, we seem to have moved backwards since the July 7 call with the Corps, after which we were going to send a 30-day letter launching formal consultation.

The informal elevation process (District or Division Commander and our Regional Director) for this would follow IF we can't come to some agreement and begin section 7 consultation.

Thanks!

On Aug. 7, Mr. Spangle informally elevated the issue by conferring with FWS' Southwestern Regional Office staff to determine whether they agreed with the approach to conduct formal consultation on the entire Vigneto project area, rather than Army Corps' limited project area. As stated in a draft August briefing document **(see Attachment 16)**,

> We discussed the Villages at Vigneto consultation with Southwestern Regional Office staff in order to determine the direction to be taken by the agency with respect [*sic*] either a consultation based solely on the effects associated with the Corps' limited view of the action area or a consultation based on the more-comprehensive [*sic*] action area as defined in the ESA's implementing regulations. Regional Office staff advised us to continue with the latter approach and agreed to obtain guidance from the Branch of Environmental Review Branch [*sic*] at Headquarters.

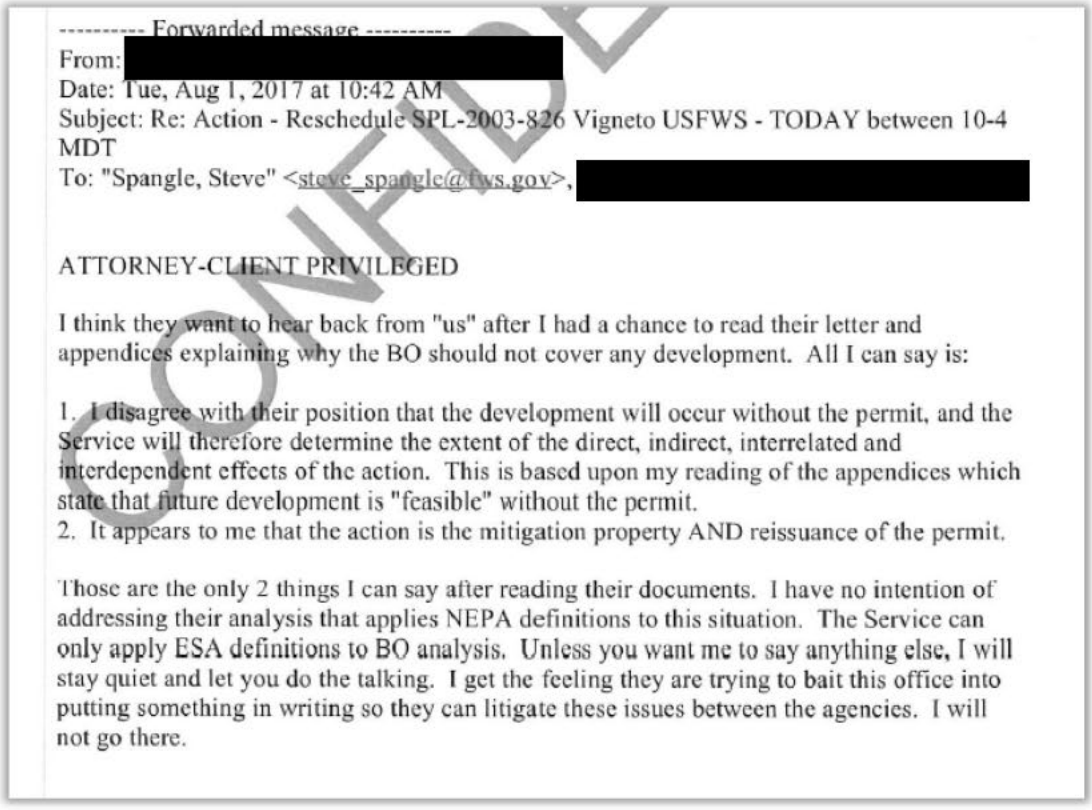
The same briefing document described the support of FWS leadership for Mr. Spangle's approach to Vigneto:

> On a past ES Project Leaders conference call with [redacted], he stated that we should only sign Biological

Opinions that include analyses based on the action area defined by the ESA's implementing regulations.

The briefing document also noted that FWS staff, DOI's Solicitor's Office, Army Corps staff and counsel, and El Dorado's counsel had a conference call on Aug. 15, 2017, in which FWS again maintained their same position. Army Corps indicated that they may pursue formal elevation of the issue to the FWS Regional Director. Mr. Spangle prepared a subsequent briefing document to the FWS Regional Director stating, "FWS should be prepared to maintain our position with respect to the consultation should the issue be elevated by the Corps," **(see last page of Attachment 16)**.

With regards to the "no Federal action" alternative, an Aug. 1 email from the DOI attorney shows that he agreed with Mr. Spangle that the development of Vigneto could not occur without the Clean Water Act permit, thereby supporting the notion that the mitigation action and the whole Vigneto project area are interrelated activities **(see figure below and Attachment 21)**. He also agreed that formal consultation would need to comply with ESA's definition of the project area (*i.e.*, the entire development).



---------- Forwarded message ----------
From: [redacted]
Date: Tue, Aug 1, 2017 at 10:42 AM
Subject: Re: Action - Reschedule SPL-2003-826 Vigneto USFWS - TODAY between 10-4 MDT
To: "Spangle, Steve" <steve_spangle@fws.gov>, [redacted]

ATTORNEY-CLIENT PRIVILEGED

I think they want to hear back from "us" after I had a chance to read their letter and appendices explaining why the BO should not cover any development. All I can say is:

1. I disagree with their position that the development will occur without the permit, and the Service will therefore determine the extent of the direct, indirect, interrelated and interdependent effects of the action. This is based upon my reading of the appendices which state that future development is "feasible" without the permit.
2. It appears to me that the action is the mitigation property AND reissuance of the permit.

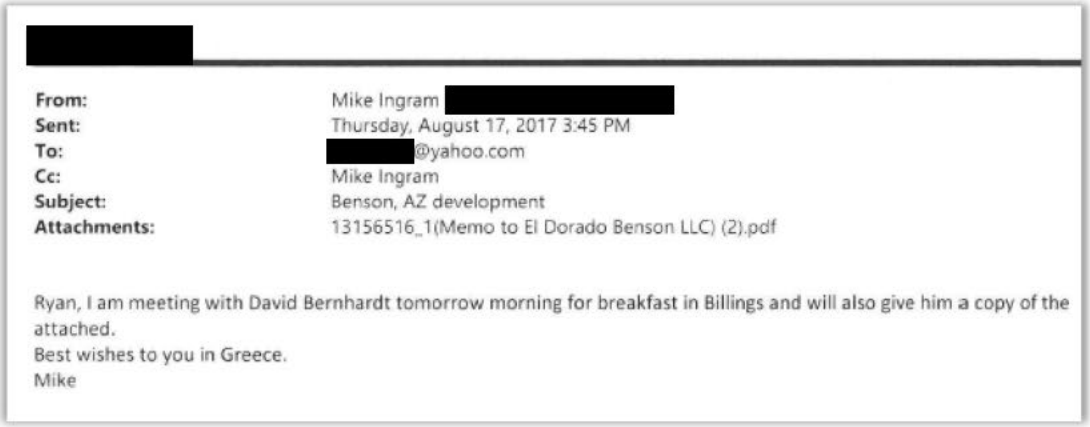
Those are the only 2 things I can say after reading their documents. I have no intention of addressing their analysis that applies NEPA definitions to this situation. The Service can only apply ESA definitions to BO analysis. Unless you want me to say anything else, I will stay quiet and let you do the talking. I get the feeling they are trying to bait this office into putting something in writing so they can litigate these issues between the agencies. I will not go there.

The Trump Administration – Dep. Sec. Bernhardt's Breakfast Meeting and Subsequent Events

As detailed in the previous section, Mr. Spangle consistently maintained FWS' decision that formal consultation must occur for the mitigation action and the full Vigneto project area through at least Aug. 15, 2017. His position was supported by other Arizona field office staff, Southwestern Regional Office Staff, and DOI's Office of the Solicitor. His approach to reaching that decision concurred with the approach outlined by the FWS Assistant Director for Endangered Species. Mr. Spangle was preparing the FWS Regional Director to maintain this same position should the issue be formally elevated by Army Corps.

The consensus among FWS employees did not change course until Mr. Spangle received a phone call from Peg Romanik, an attorney in DOI's Office of the Solicitor, on Aug. 31, 2017. The rapid succession of events leading up to, including, and transpiring after that phone call until Oct. 26, 2017 are detailed below.

On Aug. 17, 2017, two days after the FWS reiterated its position on the aforementioned call with El Dorado's counsel, Mr. Ingram sent an email to DOI Secretary Ryan Zinke's personal email address indicating that Mr. Ingram was planning to meet with Dep. Sec. Bernhardt the following day in Billings, Montana **(see figure below and Attachment 22)**. He attached a copy of a memorandum detailing the dispute between FWS and Army Corps. The memo argued that FWS should accept Army Corps' position and further suggested that the FWS Director should issue a memorandum instructing field offices to "respect the federal action agency's [*i.e.*, Army Corps] determination of the proper scope of the action."

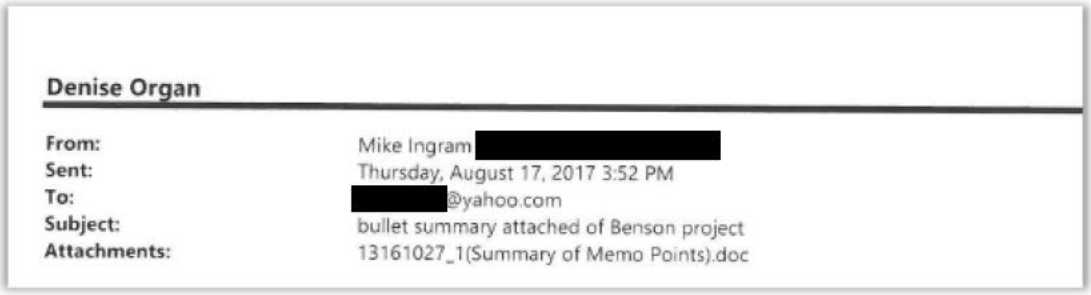


[redacted]

From: Mike Ingram [redacted]
Sent: Thursday, August 17, 2017 3:45 PM
To: [redacted]@yahoo.com
Cc: Mike Ingram
Subject: Benson, AZ development
Attachments: 13156516_1(Memo to El Dorado Benson LLC) (2).pdf

Ryan, I am meeting with David Bernhardt tomorrow morning for breakfast in Billings and will also give him a copy of the attached.
Best wishes to you in Greece.
Mike

In a subsequent email, again to Zinke's personal email address, Mr. Ingram attached a bulleted summary of the Vigneto dispute that stressed a "need for high level action to ensure consistency and correct application of the FWS' regulations that govern Section 7 consultation," **(see figure below and Attachment 23)**.

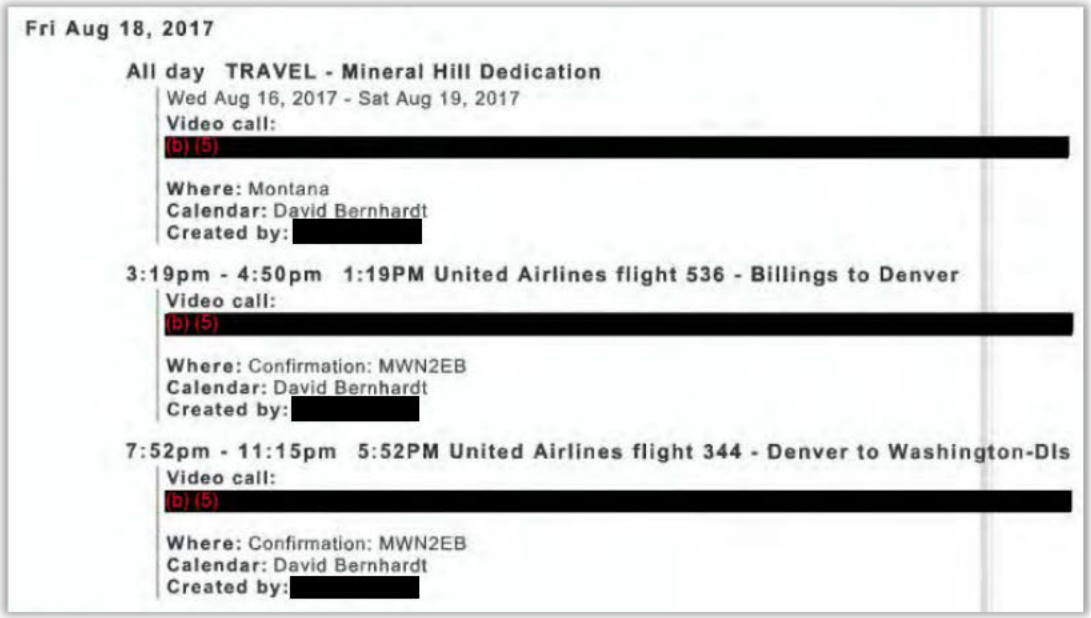


Denise Organ

From: Mike Ingram [redacted]
Sent: Thursday, August 17, 2017 3:52 PM
To: [redacted]@yahoo.com
Subject: bullet summary attached of Benson project
Attachments: 13161027_1(Summary of Memo Points).doc

Of note, the Federal Records Act requires that official business matters contained in private email correspondence be transmitted to an official government email address within 20 days.[4] None of Secretary Zinke's emails referenced here were included in documents that DOI produced to the Committee.

The breakfast meeting that Mr. Ingram referred to in his Aug. 17 email did not appear in Dep. Sec. Bernhardt's public calendar or travel schedule for the following day **(see figures below and Attachments 24 and 25)**.



Fri Aug 18, 2017

All day TRAVEL - Mineral Hill Dedication
Wed Aug 16, 2017 - Sat Aug 19, 2017
Video call:
(b) (5) [redacted]
Where: Montana
Calendar: David Bernhardt
Created by: [redacted]

3:19pm - 4:50pm 1:19PM United Airlines flight 536 - Billings to Denver
Video call:
(b) (5) [redacted]
Where: Confirmation: MWN2EB
Calendar: David Bernhardt
Created by: [redacted]

7:52pm - 11:15pm 5:52PM United Airlines flight 344 - Denver to Washington-Dls
Video call:
(b) (5) [redacted]
Where: Confirmation: MWN2EB
Calendar: David Bernhardt
Created by: [redacted]

[4] 44 U.S.C. § 2911; Zinke's use of private email was the subject of an investigation by DOI's Office of Inspector General, which was then combined with another investigation and referred to the Department of Justice. See Letter from Gail Ennis, Acting Inspector General, Office of the Inspector General, U.S. Dept of the Interior to Rep. Raúl Grijalva, Ranking Member, H. Comm. on Natural Resources and Rep. Elijah Cummings, Ranking Member, H. Comm. on Oversight and Government Reform (July 29, 2019), https://naturalresources.house.gov/interior-inspector-general-letter-to-grijalva-and-cummings-on-zinke-emails-investigation-july-29-2019.

Friday, August 18, 2017
Billings, MT → Washington, DC

9:30am	*Note: Heather Swift departs for airport*
9:30 - 9:50am	**All-hands meeting with BLM Montana/Dakotas** Location: BLM Montana/Dakotas State Office 5001 Southgate Drive - Billings POC: [redacted] (b) (6)
9:50 - 10:30am	**Meeting with BLM Montana/Dakotas senior leadership** Location: As above

However, an Aug. 17 email from Dep. Sec. Bernhardt's Special Assistant to Dep. Sec. Bernhardt's official DOI email account confirmed that the breakfast meeting would take place in Dep. Sec. Bernhardt's hotel the next morning **(see figure below and Attachment 26)**.

From: Renner, Elinor
To: David Bernhardt
Cc: [redacted] Scott Hommel; Heather Swift
Subject: Confirming Breakfast Meeting Tomorrow
Date: Thursday, August 17, 2017 5:44:48 PM

Good Evening,

I apologize for mistakenly sending my earlier emails from Scott's account. I have made arrangements for your breakfast meeting with Mike Ingram at 8:00 a.m. tomorrow. I reserved the private dining room at the Montana Sky Restaurant, which is on the 20th floor of your hotel. The reservation is under your name. There is a buffet or menu service available. I have confirmed with Mike's assistant, [redacted] so everything should be all set.

An email between Mr. Ingram and Michael Reinbold, one of Mr. Ingram's development partners for Vigneto, indicated that a call with Dep. Sec. Bernhardt was also scheduled for that day **(see figure below and Attachment 27)**. The call also did not appear on Dep. Sec. Bernhardt's public calendar or travel documents.

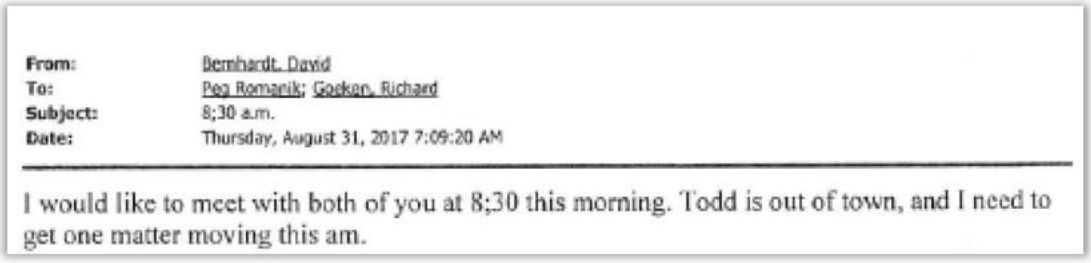
To: Mike Ingram [redacted]
From: Mike Reinbold
Location: Mike Ingram will call Mike Reinbold at [redacted]
Importance: Normal
Subject: Accepted: 7 am AZ time / 8 am MT: call with Mike Ingram, David Bernhardt
Start Date/Time: Fri 8/18/2017 2:00:00 PM
End Date/Time: Fri 8/18/2017 3:30:00 PM

When questioned in a 2019 transcribed interview with the Committee on a separate issue, DOI Chief of Staff Todd Willens was unable or unwilling to explain why the breakfast meeting did not appear in Dep. Sec. Bernhardt's calendars, travel documents, routine scheduling correspondence with the DOI Ethics Department, meeting request forms, a daily scheduling card provided to Dep. Sec. Bernhardt, or any other scheduling documentation that DOI provided to the Committee.[5] During this questioning, Mr. Willens abruptly requested a break, despite the agreement to keep breaks to previously designated transition periods. He had not requested a break before that time.

Interviewer:	So normal practice was to have somebody fill out a meeting request form before they could meet with him [Dep. Sec. Bernhardt], correct?
Willens:	Correct.
Interviewer:	Okay. So as far as you know, with no meeting request form, no scheduling emails, would this [meeting with Mr. Ingram] have been cleared through ethics?
Willens:	It would have been run through ethics.
Interviewer:	Okay. And how would that have happened?
Willens:	We would have been -- the meeting request form would have been filled out, it would have been submitted to ethics, and then it would have been -- the response one way or the other would have been given back to [the scheduler], and then [the scheduler] would schedule it for a call or a meeting, whatever he wants.
Interviewer:	Okay. But we didn't receive any scheduling emails or meeting request forms, so --
Willens:	I don't know.
Interviewer:	Okay. So on August 31st --
Willens:	Can I take a break for a couple minutes, do you mind?

Less than two weeks after the breakfast meeting, on Aug. 31, 2017, Dep. Sec. Bernhardt requested a meeting with Peg Romanik from DOI's Office of the Solicitor and Richard Goeken, Deputy Solicitor for Parks and Fish and Wildlife **(see figure below and Attachment 28)**.

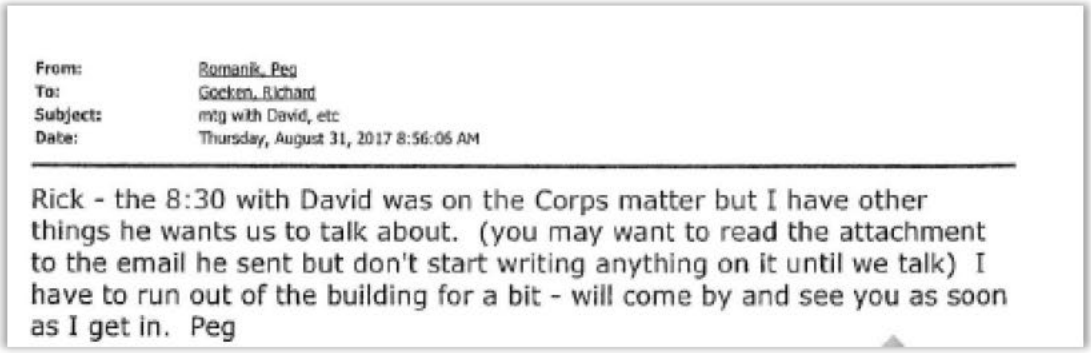
[5] Transcribed Interview of Todd Willens, U.S. Department of the Interior for the U.S. House Committee on Oversight and Reform and the U.S. House Committee on Natural Resources (July 18, 2019).



From: Bernhardt, David
To: Peg Romanik; Goeken, Richard
Subject: 8;30 a.m.
Date: Thursday, August 31, 2017 7:09:20 AM

I would like to meet with both of you at 8;30 this morning. Todd is out of town, and I need to get one matter moving this am.

Mr. Goeken was presumably unable to attend, as is reflected in Dep. Sec. Bernhardt's public calendar **(see Attachment 29)**. Immediately after the meeting, Ms. Romanik emailed Mr. Goeken to tell him that the 8:30 a.m. meeting was about "the Corps matter." She referred to an unidentified attachment **(see figure below and Attachment 30)**.



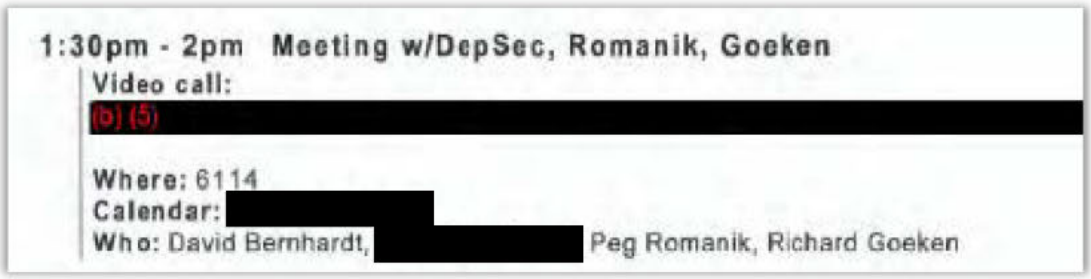
From: Romanik, Peg
To: Goeken, Richard
Subject: mtg with David, etc
Date: Thursday, August 31, 2017 8:56:06 AM

Rick - the 8:30 with David was on the Corps matter but I have other things he wants us to talk about. (you may want to read the attachment to the email he sent but don't start writing anything on it until we talk) I have to run out of the building for a bit - will come by and see you as soon as I get in. Peg

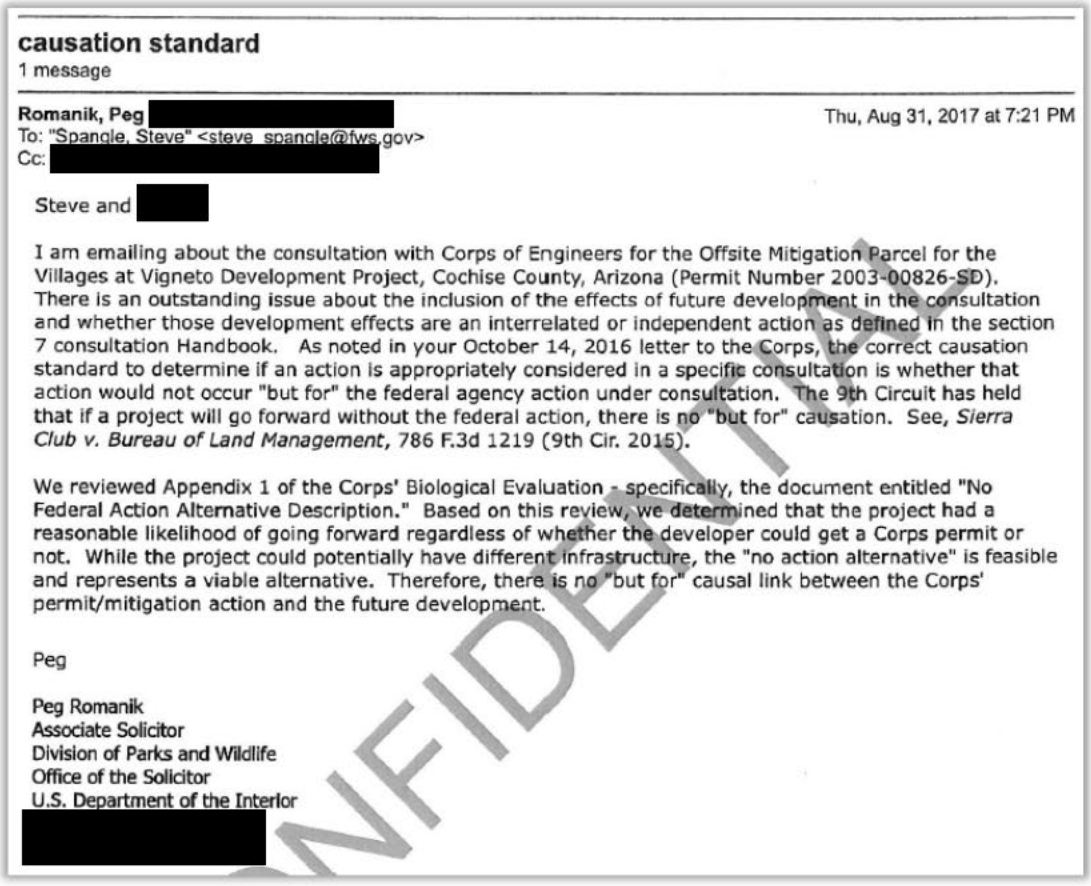
Mr. Spangle says that, around midmorning that same day, he received the phone call from Ms. Romanik in which she directed him to change his decision about Vigneto at the request of a "high level politico."[6] Hours later, Dep. Sec. Bernhardt's public calendar shows that he, Ms. Romanik, and Mr. Goeken held another meeting at 1:30 p.m **(see figure below and Attachment 29)**. Dep. Sec. Bernhardt's scheduler was also listed on the schedule as a matter of practice, although she did not typically attend meetings.[7]

[6] Tony Davis, *Ex-federal Official: 'I got rolled' by the Trump administration to ease way for Vigneto housing development*, ARIZONA DAILY STAR (Apr. 29, 2019, updated Oct. 16, 2020), https://tucson.com/news/local/ex-federal-official-i-got-rolled-by-trump-administration-to/article_e6d7a688-0a63-5f88-b993-24384d87a4bd.html.

[7] Briefing with [redacted], U.S. Department of the Interior for the U.S. House Committee on Oversight and Reform and the U.S. House Committee on Natural Resources (June 10, 2019).


1:30pm - 2pm Meeting w/DepSec, Romanik, Goeken
Video call:
(b) (5)
Where: 6114
Calendar:
Who: David Bernhardt, Peg Romanik, Richard Goeken

That evening, Ms. Romanik sent an email about Vigneto to Mr. Spangle and the DOI attorney who had been working closely with Mr. Spangle on Vigneto throughout its permit history. In her email, she contended that because Vigneto could be developed without a Clean Water Act permit (*i.e.*, the "no Federal action" alternative), there was no *but for* causation, indicating that the development and the permit activities, including the mitigation action, were not interrelated activities **(see figure below and Attachment 31)**.


causation standard
1 message

Romanik, Peg Thu, Aug 31, 2017 at 7:21 PM
To: "Spangle, Steve" <steve_spangle@fws.gov>
Cc:

Steve and

I am emailing about the consultation with Corps of Engineers for the Offsite Mitigation Parcel for the Villages at Vigneto Development Project, Cochise County, Arizona (Permit Number 2003-00826-SD). There is an outstanding issue about the inclusion of the effects of future development in the consultation and whether those development effects are an interrelated or independent action as defined in the section 7 consultation Handbook. As noted in your October 14, 2016 letter to the Corps, the correct causation standard to determine if an action is appropriately considered in a specific consultation is whether that action would not occur "but for" the federal agency action under consultation. The 9th Circuit has held that if a project will go forward without the federal action, there is no "but for" causation. See, *Sierra Club v. Bureau of Land Management*, 786 F.3d 1219 (9th Cir. 2015).

We reviewed Appendix 1 of the Corps' Biological Evaluation - specifically, the document entitled "No Federal Action Alternative Description." Based on this review, we determined that the project had a reasonable likelihood of going forward regardless of whether the developer could get a Corps permit or not. While the project could potentially have different infrastructure, the "no action alternative" is feasible and represents a viable alternative. Therefore, there is no "but for" causal link between the Corps' permit/mitigation action and the future development.

Peg

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
U.S. Department of the Interior

Mr. Spangle forwarded the email to , indicating his disagreements with her and asserting that there was now "conflicting SOL [solicitor] advice," **(see figure below and Attachment 32)**.

To: [redacted]
From: Steve Spangle <steve_spangle@fws.gov>
Sent: 2017-08-31T21:15:15-04:00
Importance: Normal
Subject: Fwd: causation standard
Received: 2017-08-31T21:15:20-04:00

It appears she confused "interrelated and interdependent actions" with "indirect effects". The former doesn't involve causation but the latter does. Nonetheless if someone (who?) determines that alternative designs are feasible, there would be no "but for" causation and thus no indirect effects according to her reasoning.

FYI, [redacted] has said that he could argue it either way, but he has held to his advice that we consider the indirect effects. We thus have conflicting SOL advice.

Sent from my iPhone

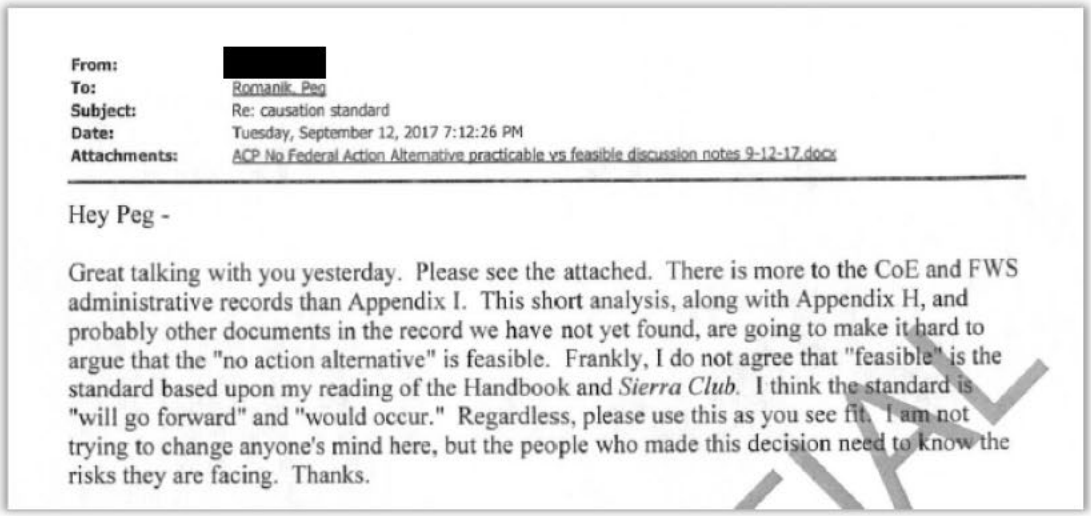
Begin forwarded message:

The next day, Sept. 1, [redacted] forwarded the email to [redacted]. His email indicated both a sense of alert and caution **(see figure below and Attachment 33)**.

To: [redacted]
From:
Sent: 2017-09-01T13:16:15-04:00
Importance: Normal
Subject: Fwd: causation standard
Received: 2017-09-01T13:16:43-04:00

something I need to put on your radar today... going slowly on this one...

Several days later, on Sept. 12, the DOI attorney who had been working on Vigneto emailed Ms. Romanik expressing his doubt in her assessment that Vigneto's "no Federal action" alternative was feasible. He also did not believe feasibility was the appropriate legal standard to use. Finally, he cautioned her by saying, "the people who made this decision need to know the risks they are facing," **(see figure below and Attachment 34)**.



From: [redacted]
To: Romanik, Peg
Subject: Re: causation standard
Date: Tuesday, September 12, 2017 7:12:26 PM
Attachments: ACP No Federal Action Alternative practicable vs feasible discussion notes 9-12-17.docx

Hey Peg -

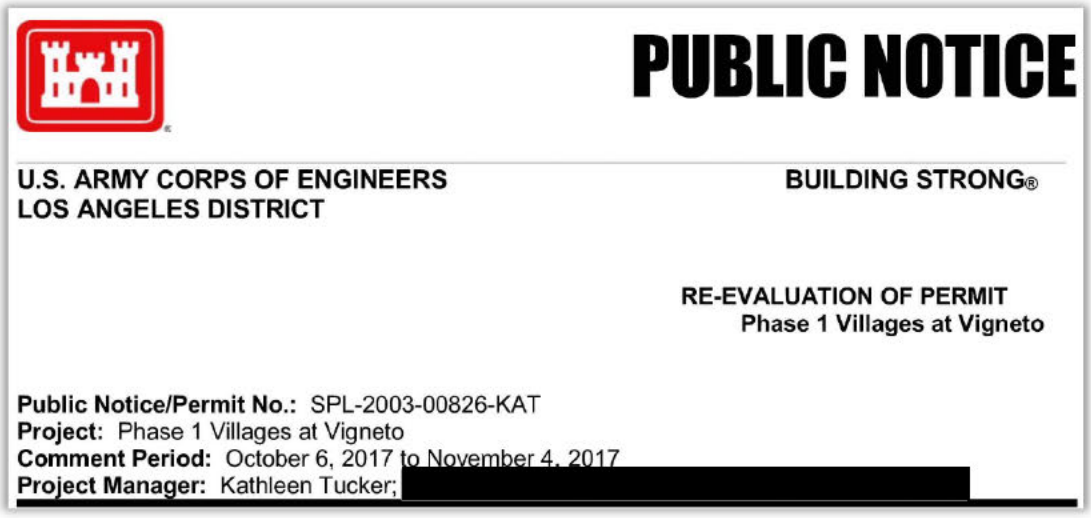
Great talking with you yesterday. Please see the attached. There is more to the CoE and FWS administrative records than Appendix I. This short analysis, along with Appendix H, and probably other documents in the record we have not yet found, are going to make it hard to argue that the "no action alternative" is feasible. Frankly, I do not agree that "feasible" is the standard based upon my reading of the Handbook and *Sierra Club*. I think the standard is "will go forward" and "would occur." Regardless, please use this as you see fit. I am not trying to change anyone's mind here, but the people who made this decision need to know the risks they are facing. Thanks.

Two days later, on Sept. 14, El Dorado sent a letter to Army Corps advising of their intention to proceed with the Vigneto project's "no Federal action" alternative if necessary **(see Attachment 4)**. This declaration presumably addressed the DOI attorney's concerns about meeting the "will go forward" or "would occur" standard.

Less than two weeks later, on Sept. 25, Army Corps transmitted the letter from El Dorado to FWS saying,

> With this clarification on the certainty of the no Federal action alternative and very limited control and responsibility of the Corps' section 404 Clean Water Act permit authority over the proposed development project, we believe the views expressed in your letter dated Oct. 14, 2016, incorrectly characterizes the direct and indirect effects of the proposed federal action. As such, we request that you retract your letter. **(See Attachment 35).**

On Oct. 6, the Army Corps issued a public notice announcing the re-evaluation of the Clean Water Act permit for Vigneto **(see figure below and Attachment 36)**.



PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

RE-EVALUATION OF PERMIT
Phase 1 Villages at Vigneto

Public Notice/Permit No.: SPL-2003-00826-KAT
Project: Phase 1 Villages at Vigneto
Comment Period: October 6, 2017 to November 4, 2017
Project Manager: Kathleen Tucker; [redacted]

It is probable that El Dorado already knew the permit would be noticed for re-evaluation. A draft copy of the public notice dated Oct. 4, 2017, was included in a document production from El Dorado to the Committee **(see Attachment 37)**. Also, in a heavily redacted "Partners Update" from El Dorado dated Oct. 4, 2017, the company expressed confidence that the Clean Water Act permit would be reinstated soon **(see figure below and Attachments 38 and 39)**.

In addition, we have made significant progress in our efforts to have our Corp 404 permit reinstated with the expectation the permit will be reinstated within 90 days. Redacted

Redacted

Should you have any questions please contact us at your convenience.

On Oct. 6, the same day the permit re-evaluation was noticed, Mr. Ingram made an unusual, out-of-cycle $10,000 donation to the Trump Victory Fund (TVF), then a joint fundraising committee. He was not the only person to make a large donation at this time; eleven other individuals from Arizona also donated to TVF on Oct. 5 and Oct. 6 and another individual donated to TVF on Oct. 10. In total, the 13 donors gave $147,000 to TVF between Oct. 5 and Oct. 10. **See Appendix 1 for details on all 13 individuals' donations.**

Joint fundraising committees can be used as pass-throughs for donated funds. The donor can specify the ultimate destination of the funds, or the joint fundraising committee can distribute the donations according to an agreement between the committee and the recipients. The ultimate fund recipients for TVF were the Republican National Committee (RNC), Donald J. Trump for President, Inc. (DJTFP), and state Republican parties.[8]

[8] Reena Flores, *Donald Trump, RNC Sign Joint Fundraising Deal*, CBS NEWS (May 18, 2016), https://www.cbsnews.com/news/donald-trump-rnc-sign-joint-fundraising-deal/

Each donor, except Mr. Ingram and Edward Robson, directed $5,400 to DJTFP, a personal campaign fund over which Trump had the most direct control. The first $2,700 was for the primary election and the second $2,700 was for the general election, which was the maximum donation amount for both campaign types at the time.

Federal Elections Commission records show that Mr. Ingram also directed $5,400 to DJTFP on Oct. 6, but those donations were refunded, possibly because Mr. Ingram had already donated the maximum amount in December 2016. Edward Robson had also already donated the maximum amount to DJTFP on Aug. 28, 2017. However, his son, Steven Robson donated $5,400 on Oct. 10, which was then directed to DJTFP.

Nine of the 13 donors gave more than $5,400 to TVF. In those cases, most or all of the remaining funds were directed to the Republican National Committee. Donald Tapia also gave $94,600 to the RNC directly. In total, between Oct. 5 and Oct. 10, the 13 individuals donated $241,600 to the RNC and TVF, with $59,400 of the TVF funds going to DJTFP.

This level of donor activity was not typical. Throughout the entire 2017–2018 election cycle, there were no other days in which more than three people from Arizona donated $2,700 or more to TVF.

There is evidence suggesting that Mr. Ingram had a relationship with most of the donors:

- **Warren Florkiewicz** is a co-owner of El Dorado Benson, the LLC associated with Vigneto.[9]
- **Gerald Colangelo** is a cofounder of JDM Partners, which partnered with El Dorado on a major real estate development called Douglas Ranch.[10] **Mel Shultz** and **David Eaton** are also JDM cofounders.
- **David McIntyre, Jr.,** CEO of Triwest Healthcare, cohosted an event with Mr. Ingram and his wife, featuring actor Gary Sinise on March 9, 2012.[11] TriWest and El Dorado have been members of the Greater Phoenix Economic Council/Greater Phoenix Leadership since at least 2015.[12]

[9] Result for El Dorado Benson LLC, Arizona Corporation Commission, https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=L19173525 (search "El Dorado Benson LLC" in eCorp, select Entity ID "L19173525") (last visited Apr. 28, 2022).
[10] Angela Gonzales, *37,000-acre master-planned community in far West Valley moves forward*, PHOENIX BUSINESS JOURNAL (Updated Jan. 16, 2019), https://www.bizjournals.com/phoenix/news/2019/01/16/37-000-acre-master-planned-community-in-far-west html?b=1547606472%5E21411449
[11] Result for Andy Tobin 2012 Financial Disclosure Statement, Historical Officeholder Financial Disclosure Statements, Arizona Secretary of State https://apps.azsos.gov/election/Financial_Disclosure/Documents/Tobin%202012.pdf (last visited Apr. 28, 2022).
[12] Greater Phoenix Leadership, Members, https://gplinc.org/leadership (last visited Apr. 28, 2022).

- **Edward Robson** is an owner of Robson Communities, a prominent and prolific developer of real estate projects in Arizona and Texas. **Steven Robson** is his son, who is also a developer.
- **Arturo "Arte" Moreno** served on the board of TGen, the Translational Genomics Research Institute Foundation since 2017.[13] According to the Arizona Corporation Commission, Mr. Ingram is a Director of TGen.[14] **Carole Moreno** is Arte Moreno's wife.
- **Jerry Moyes** has served with Mr. Ingram on the Board of the Arizona-Mexico Commission since at least 2017.[15]
- The Committee did not find publicly available evidence of relationships between Mr. Ingram and **Donald Tapia** and **Jason Hope**.

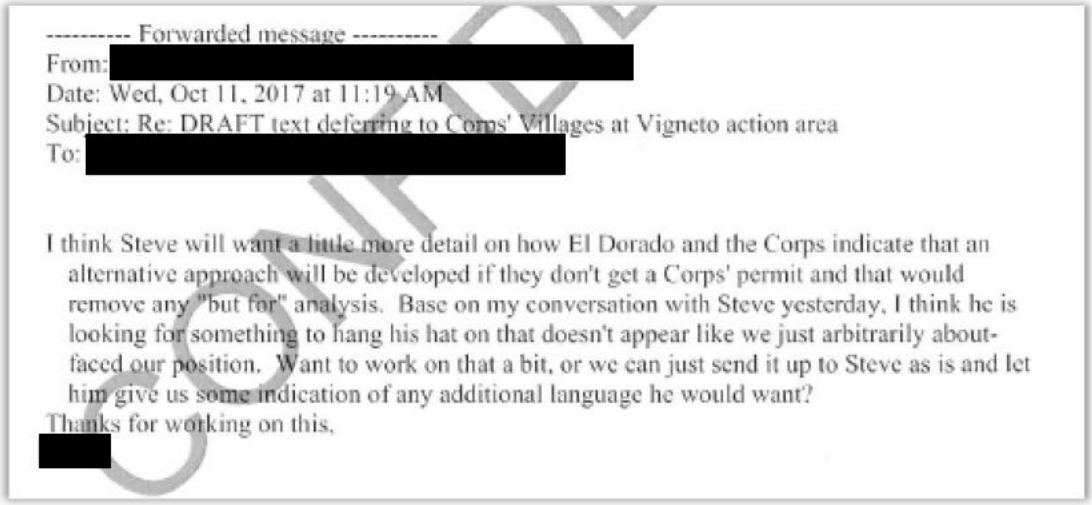
Also on Oct. 6, the same day of Mr. Ingram's donation and the permit re-evaluation announcement, Dep. Sec. Bernhardt held a meeting with Ms. Romanik. The other two listed attendees were scheduling and administrative support who, as previously mentioned, did not always attend meetings when listed. The subject of that meeting was not disclosed in Dep. Sec. Bernhardt's calendar **(see figure below and Attachment 40)**.

Beginning shortly after Oct. 6 and continuing until the release of Mr. Spangle's official decision reversal on Oct. 26, 2017, a series of emails and comments on draft documents track the communication between Mr. Spangle, other Arizona field office staff, and the DOI attorney who had previously worked on Vigneto. The documents demonstrate the challenges inherent in credibly reversing this decision given FWS' longstanding position that all of the effects caused by the full Vigneto project area needed to be assessed and evaluated. Several examples are shown below.

- On Oct. 11, 2017, one of the biologists in the Arizona field office emailed a colleague indicating Mr. Spangle's concern that reversing his decision would have the appearance

[13] Translational Genomics Research Institute Foundation, TGen Foundation, Form 990 for period ending September 2017, https://projects.propublica.org/nonprofits/display_990/331092191/10_2018_prefixes_31-34%2F331092191_201709_990_2018101715801211 (last visited Apr. 28, 2022).
[14] Result for Translational Genomics Research Institute Foundation, Arizona Corporation Commission, https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=11211915 (search "Translational Genomics Research Institute Foundation" in eCorp) (last visited Apr. 28, 2022).
[15] Office of the Governor, Governor's Appointments of State Officials and Members of Boards and Commissions (July to Dec. 2017), available at https://bc.azgovernor.gov/file/29043/download?token=t3KFrHtt

that they "arbitrarily about-faced" on their position **(see figure below and Attachment 41)**.



---------- Forwarded message ----------
From: [redacted]
Date: Wed, Oct 11, 2017 at 11:19 AM
Subject: Re: DRAFT text deferring to Corps' Villages at Vigneto action area
To: [redacted]

I think Steve will want a little more detail on how El Dorado and the Corps indicate that an alternative approach will be developed if they don't get a Corps' permit and that would remove any "but for" analysis. Base on my conversation with Steve yesterday, I think he is looking for something to hang his hat on that doesn't appear like we just arbitrarily about-faced our position. Want to work on that a bit, or we can just send it up to Steve as is and let him give us some indication of any additional language he would want?
Thanks for working on this,
[redacted]

- On Oct. 19, 2017, the attorney in DOI's Solicitor's Office who had been working with Mr. Spangle sent an email emphasizing that "we cannot be careful enough" **(see figure below and Attachment 42)**.

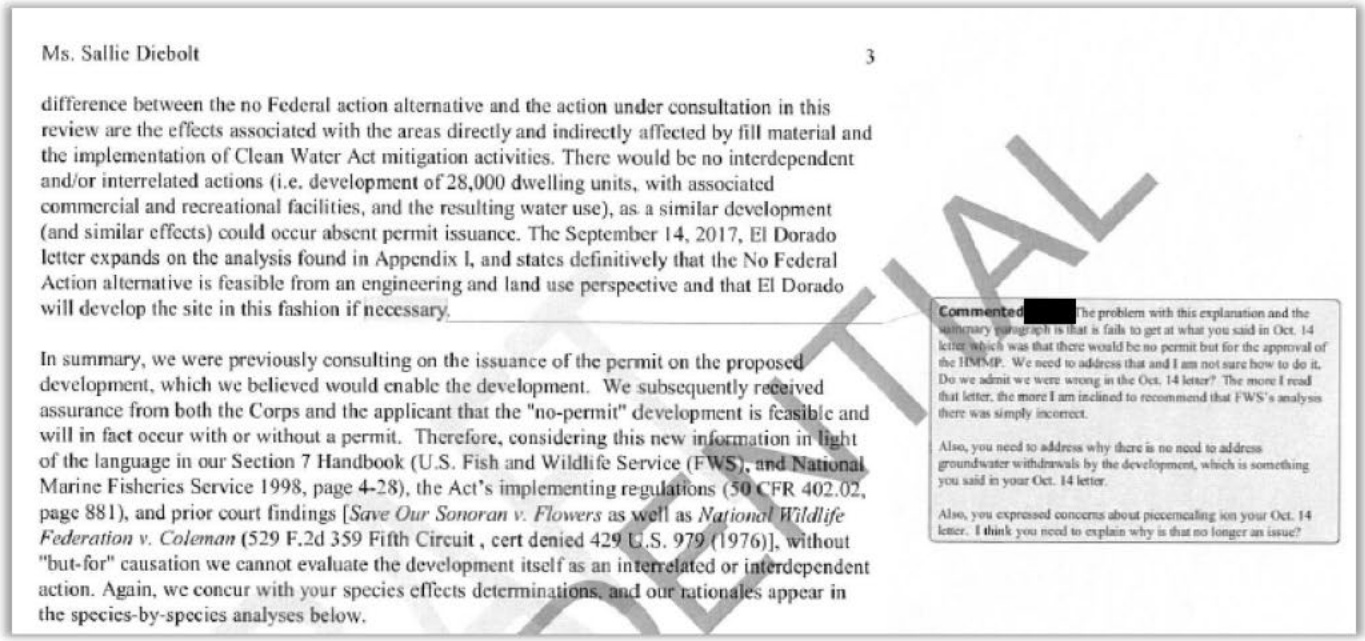
To: Spangle, Steve[steve_spangle@fws.gov]
Cc: [redacted]
From:
Sent: 2017-10-19T13:54:35-04:00
Importance: Normal
Subject: Re: DRAFT text deferring to Corps' Villages at Vigneto action area
Received: 2017-10-19T13:54:45-04:00

Sorry this is so late - been on work travel. I agree with your ideas, Steve. We cannot be careful enough on this issue with regard to clearly explaining our change in position.

On Fri, Oct 13, 2017 at 3:44 PM, Spangle, Steve <steve_spangle@fws.gov> wrote:

> Looks good [redacted] In the 4th paragraph change "effects" to "actions". In the 6th paragraph insert "adversely" before "affect".
> Also please make sure the logic is clear on why we are changing our position (use bullets or numbers if necessary):
>
> We were consulting on the issuance of the permit on the proposed development, which we believed would enable the development. We subsequently received assurance from both the Corps and the applicant that the "no-permit" development is feasible and will in fact occur with or without a permit. Therefore, considering this new information in light of the language in our Section 7 Handbook (cite) and prior court findings (cite), without "but-for" causation we cannot evaluate the development itself as an interrelated or interdependent action.
>
> Maybe a summary paragraph to that effect? [redacted]

- On Oct. 24, 2017, the same attorney emailed a draft of the letter in which Mr. Spangle would officially reverse his decision with his comments. One comment indicated several points on which the two were continuing to struggle to adequately explain why the decision had been reversed, even saying "We need to address that and I am not sure how to do it," **(see figure below and Attachment 43)**.



Ms. Sallie Diebolt 3

difference between the no Federal action alternative and the action under consultation in this review are the effects associated with the areas directly and indirectly affected by fill material and the implementation of Clean Water Act mitigation activities. There would be no interdependent and/or interrelated actions (i.e. development of 28,000 dwelling units, with associated commercial and recreational facilities, and the resulting water use), as a similar development (and similar effects) could occur absent permit issuance. The September 14, 2017, El Dorado letter expands on the analysis found in Appendix I, and states definitively that the No Federal Action alternative is feasible from an engineering and land use perspective and that El Dorado will develop the site in this fashion if necessary.

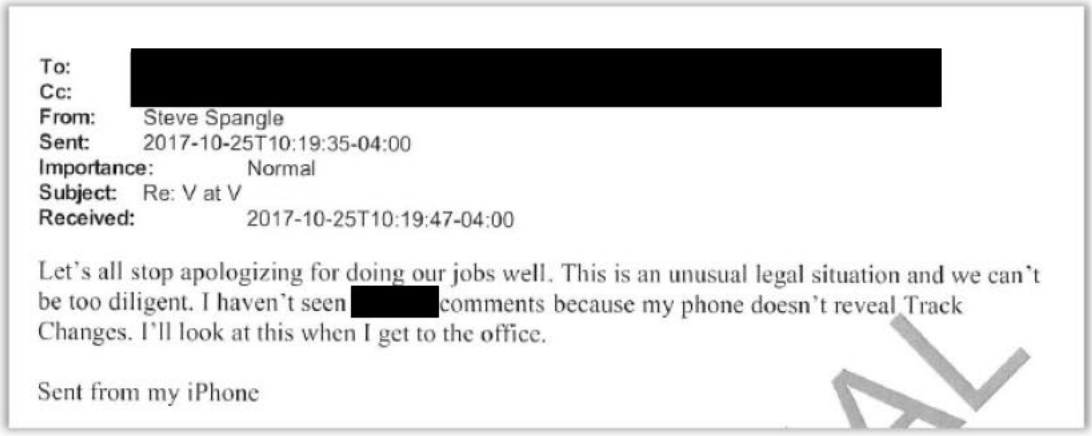
In summary, we were previously consulting on the issuance of the permit on the proposed development, which we believed would enable the development. We subsequently received assurance from both the Corps and the applicant that the "no-permit" development is feasible and will in fact occur with or without a permit. Therefore, considering this new information in light of the language in our Section 7 Handbook (U.S. Fish and Wildlife Service (FWS), and National Marine Fisheries Service 1998, page 4-28), the Act's implementing regulations (50 CFR 402.02, page 881), and prior court findings [*Save Our Sonoran v. Flowers* as well as *National Wildlife Federation v. Coleman* (529 F.2d 359 Fifth Circuit , cert denied 429 U.S. 979 (1976)], without "but-for" causation we cannot evaluate the development itself as an interrelated or interdependent action. Again, we concur with your species effects determinations, and our rationales appear in the species-by-species analyses below.

Commented [redacted] The problem with this explanation and the summary paragraph is that is fails to get at what you said in Oct. 14 letter which was that there would be no permit but for the approval of the HMMP. We need to address that and I am not sure how to do it. Do we admit we were wrong in the Oct. 14 letter? The more I read that letter, the more I am inclined to recommend that FWS's analysis there was simply incorrect.

Also, you need to address why there is no need to address groundwater withdrawals by the development, which is something you said in your Oct. 14 letter.

Also, you expressed concerns about piecemealing ion your Oct. 14 letter. I think you need to explain why is that no longer an issue?

- On Oct. 25, 2017, an email from Mr. Spangle stated, "This is an unusual legal situation and we can't be too diligent," **(see figure below and Attachment 44)**. In a subsequent email later that day, he thanked everyone for their work, referring to the decision reversal letter as an "SOB," **(see figure below and Attachment 45)**.



To: [redacted]
Cc:
From: Steve Spangle
Sent: 2017-10-25T10:19:35-04:00
Importance: Normal
Subject: Re: V at V
Received: 2017-10-25T10:19:47-04:00

Let's all stop apologizing for doing our jobs well. This is an unusual legal situation and we can't be too diligent. I haven't seen [redacted] comments because my phone doesn't reveal Track Changes. I'll look at this when I get to the office.

Sent from my iPhone

To: [redacted]
Cc:
From: Steve Spangle
Sent: 2017-10-25T20:08:54-04:00
Importance: Normal
Subject: Re: Villages at Vigneto Version 5, post 10/25 discussion
Received: 2017-10-25T20:09:05-04:00

Thanks to all of you for your good work on this SOB...

Finally, on Thursday, Oct. 26, 2017, Mr. Spangle sent an official letter to Army Corps in which he concurred with their determination that the mitigation action "may affect, but is not likely to adversely affect" the two threatened species **(see Attachment 46)**.

The following Monday, Dep. Sec. Bernhardt sent himself a reminder to call Mr. Ingram. The subject of that call is currently unknown **(see figure below and Attachment 47)**.

From: David Bernhardt
To: [redacted]
Subject: Call Mike Ingram
Date: Monday, October 30, 2017 7:38:18 PM

Sent from my iPhone

The Army Corps eventually re-instated the Clean Water Act permit for Vigneto in October 2018. However, after a Notice of Intent to sue was filed on Dec. 21, 2018,[16] the Clean Water Act permit was suspended again on Feb. 15, 2019 **(see Attachment 48)**.

Public Reporting on and Reaction to Steve Spangle's Whistleblower Account

On April 29, 2019, a couple months after Army Corps suspended the Clean Water Act permit for Vigneto a second time, the *Arizona Daily Star* published a story outlining now–retired Field Supervisor Steve Spangle's account in which he described the Aug. 31, 2017, phone call from attorney Peg Romanik in DOI's Office of the Solicitor. Mr. Spangle claimed that Ms. Romanik advised him that "a high-level politico" believed he had made the wrong decision and he would be "wise to reconsider it."[17,18] In his own words, Mr. Spangle said, "I got rolled." He noted that

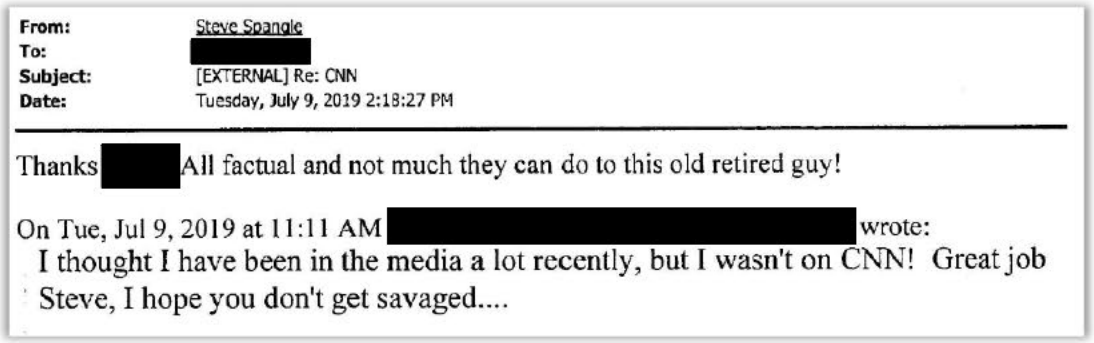
[16] Letter from Stuart Gillespie and Caitlin Miller, Earthjustice, to U.S. Army Corp of Engineers, U.S. Dept. of the Interior, and U.S. Fish and Wildlife Service, RE: Notice of Intent to Sue for Violations of Endangered Species Act in Connection with Clean Water Act Section 404 Permit No. 2003-00826-KAT for Villages at Vigneto (Dec. 21, 2018), available at https://bloximages.chicago2.vip.townnews.com/tucson.com/content/tncms/assets/v3/editorial/a/0e/a0e21191-cee7-5878-970c-aab26aa50eba/5c1d819873507.pdf.pdf

[17] Tony Davis, *Ex-federal official: 'I got rolled' by the Trump administration to ease way for Vigneto housing development*, ARIZONA DAILY STAR (Apr. 29, 2019), https://tucson.com/news/local/ex-federal-official-i-got-rolled-by-trump-administration-to/article_e6d7a688-0a63-5f88-b993-24384d87a4bd html

[18] Ian James, *High-level Trump appointee sought reversal on Arizona development near San Pedro River, ex-official says*, ARIZONA REPUBLIC (May 3, 2019), https://www.azcentral.com/story/news/local/arizona-environment/2019/05/03/ex-official-trump-reverse-decision-vigneto-political-san-pedro-river/3616674002/

this was the first time he had been subjected to political pressure of this kind in nearly three decades of service with FWS.[19]

The story caught the attention of several news outlets, leading to extensive coverage including a CNN interview with Mr. Spangle.[20] The public backlash against DOI was swift. Internal emails show that reactions to the reporting was mixed among DOI and FWS employees. A former colleague commended Mr. Spangle but showed concern about the potential for retaliation **(see figure below and Attachment 49)**.

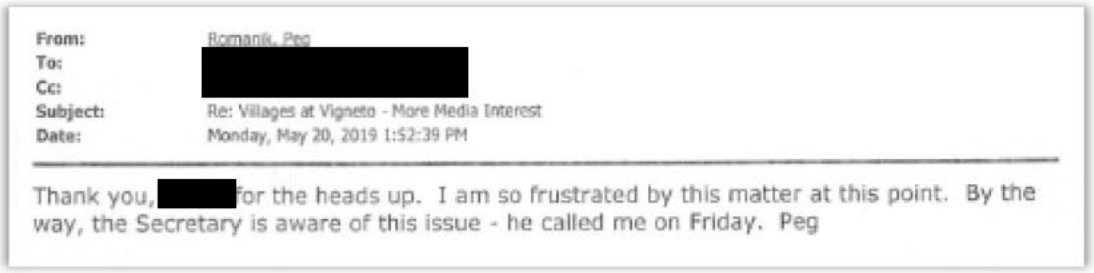


From: Steve Spangle
To: [redacted]
Subject: [EXTERNAL] Re: CNN
Date: Tuesday, July 9, 2019 2:18:27 PM

Thanks [redacted] All factual and not much they can do to this old retired guy!

On Tue, Jul 9, 2019 at 11:11 AM [redacted] wrote:
I thought I have been in the media a lot recently, but I wasn't on CNN! Great job Steve, I hope you don't get savaged....

An email from Ms. Romanik indicated her frustration with the level of media interest. Of note, her mention of "the Secretary" refers to Mr. Bernhardt, who had been recently confirmed as Sec. Zinke's replacement. She pointed out that he had called her the previous workday and discussed the matter **(see figure below and Attachment 50)**.



From: Romanik, Peg
To: [redacted]
Cc:
Subject: Re: Villages at Vigneto - More Media Interest
Date: Monday, May 20, 2019 1:52:39 PM

Thank you, [redacted] for the heads up. I am so frustrated by this matter at this point. By the way, the Secretary is aware of this issue - he called me on Friday. Peg

Three days after Ms. Romanik sent that email, the Army Corps issued a letter to FWS highlighting Mr. Spangle's recent allegations and inquiring as to whether those allegations changed FWS' Oct. 26, 2017 decision **(see Attachment 51)**. FWS responded to that letter saying that they had re-

[19] Tony Davis, *Rep. Raúl Grijalva to investigate whistleblower's claims about Vigneto project*, ARIZONA DAILY STAR (May 13, 2019), https://tucson.com/news/local/rep-raul-grijalva-to-investigate-whistleblower-s-claims-about-vigneto/article_d7d1d879-23bb-5fd9-a9c2-e0f6aa6e9fb6 html

[20] Scott Bronstein, Drew Griffin & Audrey Ash, *Whistleblower says he was pressured by Trump administration to reverse environmental decision*, CNN POLITICS (updated July 9, 2019), https://www.cnn.com/2019/07/08/politics/interior-department-arizona-development-bernhardt/index html

evaluated the 2017 decision with "no regional or Washington DC headquarters review" and had not made any changes to their decision **(see Attachment 52)**.

However, on June 28, 2021, FWS rescinded its 2017 concurrence based on an internal review of "the process by which that decision was made." Army Corps once again suspended the permit on July 1, 2021.[21]

Mr. Ingram's Personal Access to the Trump Administration

As evidenced by publicly available calendars for the Trump administration and other documents, Mr. Ingram, an independent businessman, had frequent access to high-ranking officials across the Trump administration, including DOI Secretaries Ryan Zinke and David Bernhardt, EPA Administrator Scott Pruitt, and other political appointees. This level of personal access to political appointees raises questions about Mr. Ingram's level of influence in the Trump administration.

The list below details some of Mr. Ingram's known interactions with Trump administration officials. Given that his meeting with then–Dep. Sec. Bernhardt was not included on any publicly available calendars or travel documents, it is possible that additional meetings or other engagements remain unknown.

- May 2, 2017: Mr. Ingram attended a meeting with DOI Secretary Zinke titled, "Arizona Stakeholder Meeting" that was scheduled to be held in the Secretary's Conference Room **(see Attachment 53)**. Other listed attendees included Chief of Staff Scott Hommel and DOI Solicitor Daniel Jorjani, but not then–Dep. Sec. Bernhardt. The meeting description included, "USFWS and EPA involvement and actions providing legal support forenvironmental [*sic*] groups such as the Center for Biological Diversity andEarth [*sic*] Justice to use the ESA as a pretext under private legal claims to halt development in Cochise County, Arizona." The land for the Vigneto development is located in Cochise County. Of note, after the Vigneto allegations were publicly reported, a spokesman for El Dorado publicly stated that Mr. Ingram's only meeting with a DOI official about Vigneto was his breakfast meeting with Dep. Sec. Bernhardt in Billings, Montana.[22]
- June 1, 2017: Mr. Ingram emailed Vigneto-related documents to Scott Hommel, Chief of Staff to DOI Secretary Zinke, at Mr. Hommel's personal email account. One of the attachments was a letter from Mr. Ingram to Secretary Zinke that said, "I have discussed

[21] Tony Davis, *Feds put big Benson project on hold, suspend permit allowing construction*, ARIZONA DAILY STAR (July 8, 2021, updated Apr. 5, 2022), https://tucson.com/news/local/feds-put-big-benson-project-on-hold-suspend-permit-allowing-construction/article_0053662e-df87-11eb-8c49-e7c2713ba8ae.html

[22] Tony Davis, *Interior official met 'secretly' with developer on Benson project during permitting Process*, ARIZONA DAILY STAR (July 9, 2019, updated Dec. 5, 2020), https://tucson.com/news/local/interior-official-met-secretly-with-developer-on-benson-project-at/article_ce0dfa75-11b5-5188-bc1b-d21b80004891.html#tracking-source=home-the-latest

with you several times a situation we are having with the Service at a project of ours in Benson, Arizona," **(see Attachment 54)**.

- Nov. 1–3, 2017: Mr. Ingram visited Washington, DC and attended several meetings with Trump cabinet-level members and senior officials, including EPA Administrator Scott Pruitt, Dep. Sec. Bernhardt, and Department of Housing and Urban Development Secretary Ben Carson. The meeting with Mr. Pruitt was held at the White House. Mr. Ingram's travel schedule also included an "Exclusive Bell Tower Reception" and a "Partners Dinner" at the Trump Hotel. The itinerary included a list of cell phone numbers for cabinet members and top advisors, including Marty Obst, Senior Advisor to Vice President Michael Pence **(see Attachment 55)**.
- Jan. 3, 2018: Ben Cassidy, DOI's Senior Deputy Director for External and Intergovernmental Affairs and a political appointee recently found by the DOI Office of the Inspector General to have violated his ethics pledge,[23] emailed Dep. Sec. Bernhardt to make him aware of a Jan. 5 dinner with the Congressional Sportsmen's Foundation that would be attended by Mr. Ingram. He also offered to arrange a private meeting with Mr. Ingram **(see Attachment 56)**.
- March 16, 2018: Mr. Ingram was named as a Council member at the first meeting of DOI's International Wildlife Conservation Council. He joined the Conservation and Enforcement/Trafficking Committees **(see Attachment 57)**.
- April 4-5, 2018: Mr. Ingram visited Washington, DC, and held meetings with DOI Secretary Zinke, EPA Administrator Pruitt, and Dep. Sec. Bernhardt, among others. Scheduling correspondence indicates Ben Cassidy attempted to arrange a Lincoln Memorial tour for Mr. Ingram while he was in town **(see Attachment 58)**.
- May 25, 2018: [redacted], Mr. Ingram's Executive Assistant, sent an email to Ben Cassidy with the subject line, "Articles Mike told you about." The articles included an op-ed by William Perry Pendley arguing for the pardon of Oregon ranchers and convicted arsonists Dwight and Steven Hammond **(see Attachment 59)**. The Hammonds were pardoned less than two months later.[24]
- Sept. 25, 2018: Mr. Ingram met with Ben Cassidy in Washington, DC about the International Wildlife Conservation Council.
- Jan. 4, 2019: Mr. Ingram emailed Vigneto-related documents to Ben Cassidy at Mr. Cassidy's personal email account **(see Attachment 60)**.

[23] U.S. DEPT. OF THE INTERIOR, OFFICE OF THE INSPECTOR GENERAL, REPORT 20-0040, OFFICE OF THE SECRETARY EMPLOYEE DID NOT COMPLY WITH FEDERAL ETHICS PLEDGE (2021), https://www.doioig.gov/reports/investigation/office-secretary-employee-did-not-comply-federal-ethics-pledge

[24] Elizabeth Landers, *Trump pardons ranchers whose case sparked Bundy takeover of Oregon refuge*, CNN POLITICS (updated July 11, 2018), https://www.cnn.com/2018/07/10/politics/hammonds-trump-pardon/index.html

Conclusion

Prior to the Trump administration, FWS staff and DOI legal staff agreed for years that formal consultation on Vigneto's Clean Water Act permit was required under the Endangered Species Act. Once President Trump was elected, Vigneto's developer, Michael Ingram, had access to high-ranking officials across the administration, including personal email addresses and cell phone numbers. In August 2017, Mr. Ingram had a breakfast meeting in Montana with then–Deputy Secretary Bernhardt. The breakfast meeting was not disclosed in public calendars or in documents produced to the Committee.

After the meeting and apparently at Dep. Sec. Bernhardt's direction, Peg Romanik, a DOI attorney, handed down a directive to reverse FWS' position, a process through which the primary decision-maker and whistleblower claimed he "got rolled" and deemed highly unusual. DOI career staff struggled to justify the about-face, claiming it created risks for the agency. Then, on Oct. 6, three things happened. The Army Corps officially announced the re-evaluation of the Clean Water Act permit; the developer and several others from Arizona made highly unusual out-of-cycle donations that day, and the days immediately prior and subsequent, totaling $241,600 to the Trump Victory Fund and the Republican National Committee; and Dep. Sec. Bernhardt held a meeting with Ms. Romanik, on an undisclosed topic. A few weeks later, FWS officially reversed its position regarding issuance of the Clean Water Act permit.

Together, these facts raise serious concerns about a potentially criminal *quid pro quo*. We therefore refer this matter to the Department of Justice and request further investigation and, if warranted, criminal charges.

We appreciate your attention to this important matter. Please contact the Oversight and Investigations Subcommittee staff at (202) 225-6065 should you have any questions about this request.

Sincerely,

Raúl M. Grijalva
Chair
Committee on Natural Resources

Katie Porter
Chair
Subcommittee on Oversight and Investigations
Committee on Natural Resources

cc: The Honorable Allen Dickerson, Chair, Federal Election Commission
The Honorable Steven T. Walther, Vice Chair, Federal Election Commission
The Honorable Shana M. Broussard, Commissioner, Federal Election Commission
The Honorable Sean J. Cooksey, Commissioner, Federal Election Commission
The Honorable James E. Trainor III, Commissioner, Federal Election Commission
The Honorable Ellen L. Weintraub, Commissioner, Federal Election Commission

APPENDIX 1

Donor	Method of Donation	Recipient	Amount Received	Election	Line # Label	Contributions Year to Date	Date
COLANGELO, GERALD *(Total: $10,000)*	Direct contribution	TRUMP VICTORY	10,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	10,000.00	10/6/2017
Transfers from Trump Victory *(Total: $10,000)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	4,600.00	PRIMARY	Transfers from Authorized Committees	4,600.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
EATON, DAVID *(Total: $10,000)*	Direct contribution	TRUMP VICTORY	10,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	10,000.00	10/6/2017
Transfers from Trump Victory *(Total: $10,000)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	4,600.00	PRIMARY	Transfers from Authorized Committees	4,600.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	

FLORKIEWICZ, WARREN *(Total: $10,000)*	Direct contribution	TRUMP VICTORY	10,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	10,000.00	10/6/2017
Transfers from Trump Victory *(Total: $10,000)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	4,600.00	PRIMARY	Transfers from Authorized Committees	4,600.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
HOPE, JASON *(Total: $5,400)*	Direct contribution	TRUMP VICTORY	5,400.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	5,400.00	10/6/2017
Transfers from Trump Victory *(Total: $5,400)*	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
INGRAM, MIKE *(Total: $11,000)*	EARMARKED CONTRIBUTION	STANTON FOR CONGRESS	1,000.00	PRIMARY (2018)	Contributions from Individuals/Persons Other Than Political Committees	1,000.00	10/6/2017
	Direct contribution	TRUMP VICTORY	10,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	10,000.00	10/6/2017
Transfers from Trump Victory	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	10,000.00	PRIMARY	Transfers from Authorized Committees	29,900.00	

(Total: $10,000)	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	-2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	-2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	0.00	
MCINTYRE, DAVID J. *(Total: $35,000)*	Direct contribution	TRUMP VICTORY	35,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	35,000.00	10/6/2017
Transfers from Trump Victory *(Total: $35,000)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	29,600.00	PRIMARY	Transfers from Authorized Committees	29,600.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
MORENO, ARTE *(Total: $5,400)*	Direct contribution	TRUMP VICTORY	5,400.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	5,400.00	10/6/2017
Transfers from Trump Victory	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	

(Total: $5,400)	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
MORENO, CAROLE *(Total: $5,400)*	Direct contribution	TRUMP VICTORY	5,400.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	5,400.00	10/6/2017
Transfers from Trump Victory *(Total: $5,400)*	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
MOYES, JERRY *(Total: $10,000)*	Direct contribution	TRUMP VICTORY	10,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	10,000.00	10/5/2017
Transfers from Trump Victory *(Total: $10,000)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	4,600.00	PRIMARY	Transfers from Authorized Committees	4,600.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
ROBSON, EDWARD *(Total: $26,000)*	Direct contribution	RUSS FAGG SENATE COMMITTEE	1,000.00	PRIMARY (2018)	Contributions from Individuals/Persons Other Than Political Committees	1,000.00	10/6/2017
	Direct contribution	TRUMP VICTORY	25,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	50,000.00	10/6/2017

Transfer from Trump Victory *(Total: $14,300)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	14,300.00	PRIMARY	Transfers from Authorized Committees	33,900.00	
ROBSON, STEVEN *(Total: $5,400)*	Direct contribution	TRUMP VICTORY	5,400.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	5,400.00	10/10/2017
Transfers from Trump Victory *(Total: $5,400)*	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
SHULTZ, MEL *(Total: $10,000)*	Direct contribution	TRUMP VICTORY	10,000.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	10,000.00	10/6/2017
Transfers from Trump Victory *(Total: $10,000)*	Aggregate transfer from Trump Victory	REPUBLICAN NATIONAL COMMITTEE	4,600.00	PRIMARY	Transfers from Authorized Committees	4,600.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	
TAPIA, DONALD *(Total: $100,000)*	HEADQUARTERS ACCOUNT RECEIPT-INDIVIDUAL	REPUBLICAN NATIONAL COMMITTEE	60,700.00	PRIMARY	Other Federal Receipts (Dividends, Interest, etc.).	60,700.00	10/6/2017
	Direct contribution	REPUBLICAN NATIONAL COMMITTEE	33,900.00	PRIMARY	Contributions from Individuals/Persons	33,900.00	10/6/2017

					Other Than Political Committees		
	Direct contribution	TRUMP VICTORY	5,400.00	PRIMARY	Contributions from Individuals/Persons Other Than Political Committees	5,400.00	10/6/2017
Transfers from Trump Victory *(Total: $5,400)*	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	PRIMARY (2020)	Transfers from Other Authorized Committees	2,700.00	
	Transfer from Trump Victory	DONALD J. TRUMP FOR PRESIDENT, INC.	2,700.00	GENERAL (2020)	Transfers from Other Authorized Committees	5,400.00	