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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR  
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

November 20, 2015

Christy Goldfuss  
Managing Director  
Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503

Dear Ms. Goldfuss:

This letter is being sent to inform you that the U.S. Senate Committee on Environment and Public Works (EPW) is investigating the management, activities, and operation of the Council on Environmental Quality (CEQ or Council). A separate letter was sent to President Obama outlining numerous concerns about the extended absence of a Senate confirmed Council Chairman and questioning the legal authority for CEQ officials to act on behalf of the Council during this vacancy period. A copy of that letter is attached for your reference.

CEQ has been without a Senate confirmed Chairman since February 2014, when Nancy Sutley resigned. CEQ's Chief of Staff, Michael Boots, then became Acting Chairman pursuant to the Vacancies Reform Act<sup>1</sup> and an order of succession memorandum in place since 2008.<sup>2</sup> Because the President did not nominate a replacement, Mr. Boots was eligible to serve as Acting Chairman under the Vacancies Reform Act for only 210 days, which expired on September 21, 2014.<sup>3</sup> It appears that Mr. Boots continued to lead the Council for another six months, in apparent violation of the Vacancies Reform Act.<sup>4</sup>

Congress enacted the Vacancies Reform Act in 1998 to clarify the process for filling senior executive branch vacancies on a temporary basis and to address concerns that the President was filling vacant positions that required Senate confirmation indefinitely in violation of the Article II, Section 2 of the Constitution (commonly referred to as the Appointments Clause).<sup>5</sup> As a result, Congress imposed a significant enforcement mechanism to limit the authority of those officials filling vacancies beyond 210 days and to encourage the President to submit timely nominations for replacements. According to the Vacancies Reform Act, at the

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<sup>1</sup> 5 U.S.C. §§ 3345

<sup>2</sup> 73 FR 54487 (Sept. 22, 2008).

<sup>3</sup> 5 U.S.C. § 3345(a)

<sup>4</sup> See, "Admin finalizes long-awaited guidelines for federal investments," Energy & Environment News, December 17, 2014; available at: <http://www.eenews.net/eenewspm/stories/1060010745/>; "Staffers on deck for Obama's 2015 executive push," Energy & Environment News, December 2, 2014; available at: [www.eenews.net/greenwire/stories/1060009755](http://www.eenews.net/greenwire/stories/1060009755).

<sup>5</sup> See, Senate Committee on Government Affairs, Report on the Federal Vacancies Reform Act of 1998, 105<sup>th</sup> Congress, 2d Session, S. Report 105-250, at 3-9.

conclusion of the 210 days, a position requiring Senate confirmation must remain vacant, and no one (other than an agency head, if applicable) may perform the “functions and duties” of the vacant office, until such time as the President nominates a replacement.<sup>6</sup> Any actions taken by any person who is not acting in accordance with the Vacancies Reform Act shall have no force or effect.<sup>7</sup>

As you know, Congress established the Council as part of the National Environmental Policy Act of 1969 (NEPA) to provide expert advice to the President on environmental policy matters, to recommend improvements in federal programs, and to assist with the study of the nation’s environmental problems among other duties.<sup>8</sup> As originally enacted by Congress, the Council was to be composed of three members who were appointed by the President with the advice and consent of the Senate. However, in recent years, Congress has allowed the Council to “consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.”<sup>9</sup> Accordingly, only a Senate confirmed Chairman, or a person acting in accordance with the Federal Vacancies Reform Act, may perform the duties of the Chairman or take action on behalf of CEQ pursuant to NEPA and other relevant legal authorities.

Earlier this year, you left your position as Deputy Director of the National Park Service and joined CEQ as a senior advisor, apparently with the intent to eventually replace Mr. Boots as head of CEQ.<sup>10</sup> On March 13, 2015, apparently in conjunction when Mr. Boots resigned from CEQ, President Obama issued a revised order of succession for CEQ to install the Managing Director as first in line to serve as acting Chairman, to the extent the individual would be eligible to act under the Vacancies Reform Act.<sup>11</sup> Upon Mr. Boots’ departure, you were named Managing Director, which appears to be a new position within CEQ.

However, the change to CEQ’s order of succession does not confer special status for the Managing Director position to operate the Council or to act on its behalf while the Chairman position is vacant. It does not change the fact that, given the President’s failure to nominate a Chairman within the time frame set forth in the Vacancies Reform Act, as a matter of law, the position of CEQ Chairman must remain vacant and no one may perform those duties until the President formally nominates a replacement and an eligible person is found to serve as the acting officer.

Accordingly, it is unclear what, if any, legal authority the Council has to operate, or what authority Mr. Boots had after September 21, 2014, or that you now have as Managing Director to lead or act on behalf of the Council, while the Chairman position remains vacant. The extended

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<sup>6</sup> 5 U.S.C. § 3348.

<sup>7</sup> 5 U.S.C. § 3348(d).

<sup>8</sup> 42 U.S.C. § 4342.

<sup>9</sup> See, P.L. 113-235, Division F, Title III of Department of the Interior, Environment, and Related Agencies Appropriations Act of 2015. In recent years, Congress has appropriated \$3 million to CEQ for salaries and operating expenses and authorized a staffing level of 24 full-time equivalent positions.

<sup>10</sup> “National Park Service official expected to take reins at CEQ,” Energy & Environment Report, January 23, 2015; available at: <http://www.eenews.net/greenwire/stories/1060012199/>.

<sup>11</sup> 80 FR 14289 (March 18, 2015).

Chairman vacancy raises significant questions whether the Council itself, or any official purportedly leading CEQ since September 21, 2014, is operating in accordance with the law given the unique statutory framework governing CEQ and the fact the Council consists of only a single Senate confirmed member who shall serve as the Chairman and exercise all powers, functions, and duties of the Council. Pursuant to the Vacancies Reform Act, the position of CEQ Chairman must remain vacant and, as a result, no one may perform those functions and duties assigned by law or regulation to the Council because the President has failed to nominate a replacement.

The Obama Administration's reliance on lower level staff to function as the Council indefinitely, without any apparent intention to nominate a Chairman, is contrary to the President's constitutional duty to ensure that the Vacancies Reform Act and NEPA are faithfully executed. In order for the EPW Committee to better understand CEQ's operations and activities since it has been without a permanent Chairman, it is requested that you provide the following information and unredacted copies of the following documents no later than 12 noon on December 7, 2015:

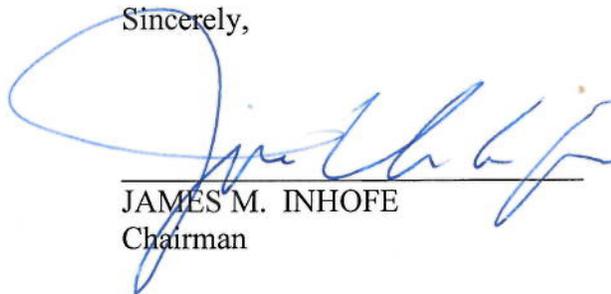
1. All documents concerning the review, concurrence, and/or approval by the Chairman, Deputy Director, Chief of Staff, Managing Director, Senior Advisor, General Counsel, and/or Associate Directors for the following documents:
  - a. Final Guidance for Effective Use of Programmatic NEPA Reviews;
  - b. Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews;
  - c. Notice of Extension of Comment Period for Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews;
  - d. Implementing Instructions for Planning for Federal Sustainability in the Next Decade;
  - e. Final Interagency Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies;
  - f. Federal Flood Risk Management Standard and Draft Implementation Guidelines; and
  - g. Memorandum on Incorporating Ecosystem Services into Federal Decision Making.
2. All internal operations manuals and delegations of authority for CEQ;
3. All versions of any job or position descriptions for the Chairman, Deputy Director, Chief of Staff, Managing Director, Senior Advisor, General Counsel, and Associate Director positions since January 20, 2009;
4. All memoranda issued by CEQ to heads of federal departments and agencies between February 24, 2014 and the present date;
5. All legal memorandum concerning the authority of the Chief of Staff, Managing Director, or other officials to perform the duties of Chairman or otherwise lead CEQ when the Chairman position is vacant;
6. All travel authorizations and itineraries for:

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- a. Mr. Boots between February 24, 2014 and the date of his departure from CEQ;  
and
  - b. Ms. Goldfuss between February 1, 2015 and the present date;
7. All calendar entries for:
- a. Mr. Boots from February 24, 2014 to the date of his departure from CEQ;
  - b. Ms. Goldfuss from February 1, 2015 to the present date;
8. All briefing materials and calendar entries for meetings attended by CEQ staff related to the 21<sup>st</sup> Conference of the Parties meeting to be held in Paris beginning on November 30, 2015;
9. All documents concerning notification to the Government Accountability Office and/or Congress of any CEQ vacancies pursuant to the Vacancies Reform Act;
10. All inter-agency referrals made to, and/or responses from, CEQ pursuant to NEPA and section 309 of the Clean Air Act between February 24, 2014 and the present date.
11. A list of all inter-agency council, workgroup, and commission meetings organized or attended by representatives from CEQ since February 24, 2014, including a brief description of the purpose of the meeting, the date, and name of CEQ representatives; and
12. A list of all employees, contractors, or consultants hired or retained by CEQ since February 24, 2014, including amounts paid;

Thank you for your attention to this important matter. If you or your staff have any questions about this letter, please feel free to contact Byron Brown on the Committee's Majority staff at (202) 224-6176.

Sincerely,



JAMES M. INHOFE  
Chairman

cc: The Honorable Lisa Murkowski,  
Chairman, Subcommittee on Interior, Environment, and Related Agencies  
U.S. Senate Committee on Appropriations

The Honorable Gene Dodaro,  
Comptroller General  
U.S. Government Accountability Office

Attachment