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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

June 26, 2013

The Honorable Daniel M. Ashe
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

Dear Director Ashe,

Republican Senators on the Environment and Public Works Committee have sent you two letters over the past year requesting information on the 2011 settlement agreements between the U.S. Fish and Wildlife Service (FWS), the Center for Biological Diversity, and WildEarth Guardians. We are disappointed that you have not responded to our requests and question why the FWS refuses to provide information that promotes transparency and will help the public understand the reasons your agency entered into these settlement agreements.

You received the first letter more than a year ago on May 24, 2012 from then-Ranking Member Inhofe and then-Subcommittee on Water and Wildlife Ranking Member Sessions. The letter requested documents and answers to a series of questions about the closed-door settlement agreements to make final listing determinations for more than 250 species over the next six years. On February 28, 2013, you received a second letter from Committee Republicans requesting that you provide information to improve the transparency of what have thus far been closed-door settlement negotiations that have locked the public out of the process.

Twice now you have been asked for a record of the communications between the Administration and the plaintiffs of the aforementioned settlement agreements. Because you had cited certain issues, including a district court's local rules, as cause for not releasing this information, both letters ask for full explanations with supporting documentation as to why you are unable to provide the information we request. The longer our requests for documentation are avoided, the more evident it seems that these settlement agreements may have been entered in an unscrupulous manner.

As members of the Senate Committee on Environment and Public Works, we have oversight responsibility with respect to your Agency's actions under the Endangered Species Act. We are deeply concerned at the lack of transparency surrounding these "sue and settle" agreements and the complete disregard of our requests for documentation and explanation. Both the Committee and the public deserve proper insight into the manner in which these settlement agreements were reached.

The desire to understand FWS' decision-making process for endangered species listings is not unique to Republicans who have oversight jurisdiction. On May 22, 2013, the Department of the Interior was sued by the Public Employees for Environmental Responsibility with a request to release records of a meeting with states to discuss the Department's wolf strategy. Similar to our request, the group believes such records will shed light on Interior's decision-making process.

Many of the more than 250 listings that could occur as a result of these settlements will have a tremendous impact on states and local governments, private property rights, and economic growth. Yet, FWS chose to make these agreements with two litigious environmental groups without any consultation from Congress or affected stakeholders like state wildlife agencies who are the traditional land managers in states. Without such consultation their views remain unrepresented in the process.

It has also come to our attention that FWS entered into an additional agreement with the Center for Biological Diversity in April 2013 to make final listing determinations on ten additional species. This raises further questions as to why your agency would reach settlement agreements with these groups before providing members of the Senate with information we requested to determine whether such agreements are lawful and appropriate. In addition to the information we have already requested, we formally request that you provide us with all records of communication between the FWS and the Center for Biological Diversity pertaining to the April settlement agreement. These "sue and settle" agreements are already under public scrutiny. They most certainly do not accomplish President Obama's goal of operating "the most transparent administration in history".

During a meeting with Ranking Member Vitter on April 17, 2013, you further claimed that you are unable to provide us with the requested information because the determination for what documents can be provided rests with the Department of Justice. Congress has a responsibility to ensure oversight of the agencies we fund, and more importantly to ensure private citizens are not abused in a process devoid of transparency and consideration. Your fear of transparency in an effort to protect a handful of ideological bureaucrats is unacceptable.

Therefore, for the third time, we request that you provide us with the information initially sought in the May 24, 2012 and February 28, 2013 letters as well as the information related to the April 2013 settlement. We take our oversight responsibilities very seriously and look forward to an expeditious response to our requests.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Vitter", with a stylized flourish at the end.

David Vitter
Ranking Member
Committee on Environment & Public Works

A handwritten signature in blue ink, appearing to read "John Boozman", with a stylized flourish at the end.

John Boozman
Ranking Member
Subcommittee on Water & Wildlife

A handwritten signature in blue ink, appearing to read "James M. Inhofe", with a stylized flourish at the end.

James M. Inhofe
Ranking Member
Subcommittee on Oversight

A handwritten signature in blue ink, appearing to read "Jeff Sessions", with a stylized flourish at the end.

Jeff Sessions
Ranking Member
Subcommittee on Clean Air