



Public Employees for Environmental Responsibility

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November 20, 2019

Mr. Mark Lee Greenblatt, Inspector General
U.S. Department of Interior
1849 C Street, NW
Mail Stop 4428
Washington, DC 20240
Also filed online at: <https://www.doioig.gov/oig-hotline-forms>

RE: request for review of illegal expenditures and FVRA violation: Andrea Travnicek

Dear Inspector General Greenblatt:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to request that your office review the legality of certain actions within the Department of the Interior (DOI). From August 6, 2018, through June 28, 2019, Ms. Andrea Travnicek, whose official position was Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, exercised the authority of the Assistant Secretary for Fish and Wildlife and Parks (ASFWP), per “redelegations” of authority from Secretary of the Interior Zinke and later from Secretary Bernhardt. PEER submitted a Freedom of Information Act (FOIA) request to find out what she had done using that authority. The attached FOIA response (cover letter and compiled records) from the Office of the Secretary is the DOI’s final response to this PEER request:

*Copies of any and all documents dated since Jan. 1, 2019, indicating that **Andrea Travnicek**, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, has exercised: (a) any function or duty designated to be exercised by the Assistant Secretary for Fish and Wildlife and Parks in Title 16 U.S. Code - Conservation, Chapter 5b Wildlife Restoration, or (b) any function or duty designated to be exercised by the Assistant Secretary for Fish and Wildlife and Parks in Title 36 or Title 50, Code of Federal Regulations*

Congress has given the ASFWP position very few specific functions or duties. Among those are some financial control functions for wildlife conservation programs specified in

the U.S. Code. Relevant here, as documented in the attached FOIA response, is the ASFWP's approval of wildlife conservation expenditures per 16 U.S.C. § 669h, labelled as "Requirements and restrictions concerning use of amounts for expenses for administration". Subsection (10) in § 669h(a) gives an exclusive function to the ASFWP to approve international travel of conservation staff as follows (in pertinent part; emphasis added):

a) Authorized expenses for administration. Except as provided in subsection (b), the Secretary of the Interior may use available amounts under section 669c(a)(1) of this title only for expenses for administration that directly support the implementation of this chapter that consist of—

*(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this chapter on a full-time basis, for purposes that directly relate to administration of this chapter and that are **approved directly by the Assistant Secretary for Fish and Wildlife and Parks;***

The same language is found in a subsequent, slightly different, section that has the same header, 16 U.S.C. § 777h(a), "Requirements and restrictions concerning use of amounts for expenses for administration":

*(10) costs of travel outside the United States (except travel to Canada), by personnel who administer this chapter on a full-time basis, for purposes that directly relate to administration of this chapter and that are **approved directly by the Assistant Secretary for Fish and Wildlife and Parks;***

The fact that the statutes in both subsections calls for the ASFWP to "**directly**" approve the international travel costs underscores it is neither a delegable function nor one that can be performed by anyone else. The one exception would have been that the Secretary himself could have approved such costs in the absence of an ASFWP under FVRA. That is, 5 U.S.C. § 3348(b), in subsections (1) and (2), indicates that in the absence of a confirmed ASFWP or properly-appointed "acting" ASFWP (which Ms. Travnické was not): "the office shall remain vacant; and... only the head of such Executive agency may perform any function or duty of such office".

However, Secretary Bernhardt did not perform that function of approving the travel costs involved. Nor is there any indication he ever delegated that function. Nor is the ASFWP's authority under those particular statute sections derivative of some broader power of the Secretary. That is, there is no indication in the relevant statutes that the ASFWP is merely exercising the costs approval function on behalf of the Secretary. Again, PEER's FOIA only sought documents related to: *any function or duty designated to be exercised by the [ASFWP by statute or regulation]*. And Ms. Travnické's response produced only the travel approvals attached.

In short, the FOIA response documents show that then-Principal Deputy ASFWP Travnicek approved dozens of international travel requests from various Interior staff for which she lacked the authority to approve. Thus, they were authorized in violation of 16 U.S.C. § 669h(a) and § 777h(a), *supra*. The DOI costs amounted to over \$150,000 just for 2019 to date (note: only in the left column of the forms did she approve DOI expenditures; in about half of the forms she was approving expenditures in which all or part of the funding came from a “donor” bureau, such as the U.S. Agency for International Development or State Department). Destinations she approved included Bangkok, Dar Es Salaam, Jakarta, London, and many others.

A provision in the DOI Departmental Manual allows the ASFWP to redelegate various duties down to a Deputy Director: 209 DM 6, at: <https://www.doi.gov/elips/browse>. That delegation authority is limited in relevant ways in the highlighted phrases:

6.2 Authority to Redelegate. Except where re delegation is prohibited by statute, Executive order, or limitations established by other competent authority, the Assistant Secretary for Fish and Wildlife and Parks may redelegate general administrative authority and those program authorities specifically related to the functions and responsibilities assigned to the Assistant Secretary for Fish and Wildlife and Parks in 109 DM 6. All re delegations of authority made by the Assistant Secretary for Fish and Wildlife and Parks will be in the form of a Departmental Manual release issued in strict compliance with the provisions of 200 DM 3. No other form of re delegation is authorized.

PEER searched the Departmental Manual re delegations and found no indication that any prior Senate-confirmed ASFWP ever re delegated the international travel costs approval function under 16 U.S.C. § 669h(a)(10) or § 777h(a)(10) to a Deputy Director or lower official. This is unsurprising because, again, the statutes are clear that the ASFWP must **directly** approve the costs him or herself. Redelegation is prohibited by the statutes. It is apparent that Congress wanted a “tight leash” on such high-cost travel approvals in order to avoid concerns over international “junketing”. However, Ms. Travnicek ignored that.

This amounts to a FVRA violation for which Ms. Travnicek’s approvals had “no force or effect” under 5 U.S.C. § 3348(d)(1). Her approvals “cannot be ratified” under § 3348(d)(2). Further, the unauthorized payments amount to a violation of the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A), which allows Federal employees to make only properly-authorized expenditures and puts them in jeopardy of both civil and criminal penalties for doing otherwise.

Your office is requested to promptly investigate this, including whether Ms. Travnicek could be held personally liable for making these null and void costs approvals.¹ PEER

¹ On June 28, 2019, an actual ASFWP was confirmed by the Senate, Mr. Robert Wallace. Ms. Travnicek remains employed in DOI as the Deputy Assistant Secretary for Land and Minerals Management.

looks forward to your reply. If your office needs any additional information about this request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter T. Jenkins". The signature is fluid and cursive, with the first name "Peter" being the most prominent.

Peter T. Jenkins, Senior Counsel

Tel: 202.265.4189

Email

Attachments

CC: Andrea Travnicek, Deputy Assistant Secretary for Land and Minerals Management
Robert Wallace, ASFWP

Attachment