



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

SEP 22 2008

2008 SEP 23 AM 10:21

Mr. Scott J. Bloch  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, DC 20036-4505

Re: OSC File Nos. DI-07-1993 and DI-07-2225

Dear Mr. Bloch:

On July 16, 2008, my office received a letter from Catherine McMullen of your office asking for supplemental investigation into an additional allegation that employees of the U.S. Geological Survey (USGS), Western Ecological Resource Center, San Francisco Bay Estuary Field Station, in Vallejo, California, were exposed to substantial and specific dangers to public safety. As you know, the Department of the Interior Inspector General had found that allegations involving subsequent incidents submitted to your office in July 2007 were not supported.

Based upon the earlier delegation given to me by the Secretary to respond to the Office of Special Counsel on this issue, on July 31, 2008, I asked the Inspector General to conduct a supplemental investigation of the additional allegation concerning a prior incident. On August 7, 2008, the Office of Inspector General (OIG) declined the request, and suggested that USGS determine whether this newly reported incident provided any additional insight to the OIG report of November 2007 or changes the conclusions contained in our January 15, 2008, response to your original referral, which concerned subsequent incidents. Both of these letters are enclosed.

USGS has provided me with the enclosed report in response to the OIG's suggestion. After thorough investigation, they have concluded that this additional allegation involving a prior incident does not affect the conclusions contained in the OIG report.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me as soon as possible.

Sincerely,

Kameran L. Onley  
Acting Assistant Secretary  
for Water and Science

Enclosures

cc: Associate Solicitor, Division of General Law  
DOI Office of Inspector General



# United States Department of the Interior

U.S. GEOLOGICAL SURVEY

Office of the Director

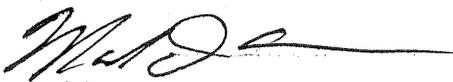
Reston, Virginia 20192

In Reply Refer To:  
Mail Stop 201  
#2008611-DO

## MEMORANDUM

SEP 18 2008

To: Kameran L. Onley  
Acting Assistant Secretary - Water and Science

From: Mark D. Myers   
Director, U.S. Geological Survey

Subject: Response to U.S. Office of Special Counsel letter to Chief of Staff, Office of the Assistant Secretary for Water and Science, U.S. Department of the Interior, dated July 16, 2008; and U.S. Department of the Interior Office of Inspector General memorandum to the Acting Assistant Secretary for Water and Science, dated August 7, 2008, Subject: Request for Supplemental Investigation by U.S. Office of Special Counsel

Attached is a Supplemental Investigation Report to the U.S. Department of the Interior Office of Inspector General (OIG) Report of Investigation, Case No. PI-PI-07-0448-I, dated November 8, 2007. This supplemental investigation was conducted at the request of the U.S. Office of Special Counsel (OSC), in coordination with the OIG. It focused on an additional allegation concerning a prior incident involving U.S. Geological Survey employees crossing a railroad bridge at the Island Salt Ponds within the Don Edwards San Francisco Bay National Wildlife Refuge, San Francisco Bay, California. In requesting the supplemental investigation, the OSC also requested that a determination be made of the effect, if any, of the prior incident on the results documented in the Inspector General's (IG) November 2007 report.

We conducted a thorough follow-up investigation and, as documented in the attached report, have concluded the prior incident does not affect the conclusions contained in the IG's initial (November 2007) report. If you have any questions regarding this memorandum or the attached report, please feel free to contact either Karen Baker (703-648-7200), Associate Director for Administrative Policy and Services or Anthony Zepeda, Bureau Industrial Hygienist, Office of Administrative Policy and Services (703-648-7551).

Attachment:  
Supplemental Investigation Report

September 18, 2008

SUPPLEMENTAL INVESTIGATION: INCIDENT INVOLVING U.S. GEOLOGICAL SURVEY EMPLOYEES CROSSING A RAILROAD BRIDGE TO ACCESS SALT PONDS IN DON EDWARDS SAN FRANCISCO BAY WILDLIFE REFUGE

REFERENCES

A. U.S. Office of Special Counsel (OSC) letter to Ms. Amy Holley, Chief of Staff, Office of the Assistant Secretary for Water and Science, U.S. Department of the Interior (DOI), dated July 16, 2008.

B. DOI Office of Inspector General (OIG) letter to Ms. Kameran L. Onley, Acting Assistant Secretary for Water and Science, U.S. Department of the Interior, dated August 7, 2008.

BACKGROUND

In response to references A and B, a supplemental investigation related to OIG Case No. PI-PI-07-0448-I (report dated November 8, 2007) was conducted by the U.S. Geological Survey (USGS) Safety and Health Management Branch on August 27, 2008. This supplemental investigation was conducted at the request of the OSC in coordination with the OIG. It focused on an additional allegation concerning a prior incident involving U.S. Geological Survey employees crossing a small railroad bridge to access the salt ponds in the Don Edwards San Francisco Bay National Wildlife Refuge. The OSC became aware of the prior incident through comments submitted by whistleblowers in their review of the OIG's initial (November 2007) report. In requesting the supplemental investigation, the OSC also asked that a determination be made of the effect of the prior incident on the results documented in the Inspector General's (IG) initial report.

The supplemental investigation included an onsite interview with Mr. John Takekawa, Ph.D, Research Wildlife Biologist, USGS Western Ecological Resources Center, San Francisco Bay Estuary Field Station, and Ms. Nicole Athearn, Wildlife Biologist. A telephone interview was conducted with Ms. Ann Murphy, a former intern, on September 3, 2008. An attempt was made to contact Mr. Michael Bauman, a former intern, but current contact information was not available. Repeated attempts were made to contact Ms. Jennifer MacLean, former Biological Science Technician, but calls were not returned. A site visit to the railroad bridge was made on August 27, 2008.

DESCRIPTION OF INCIDENT

In a telephone interview with Ms. Murphy, she stated she was involved in an incident in the Fall of 2005 (she was not able to recall the exact date) while crossing the railroad bridge to access the A20 and A21 salt ponds (Island Ponds) at the Don Edwards San Francisco Bay Wildlife Refuge, located in the south bay of the San Francisco Bay in California. Ms. Murphy and Mr. Bauman

were assigned to work at the Island Ponds. Personnel are periodically assigned to conduct water quality monitoring and bird counting at the ponds. In order to access the ponds, Ms. Murphy and Mr. Bauman had to walk along a railroad bridge to cross a shallow body of water. Before entering onto the bridge, Ms. Murphy stated she looked down both sides of the railroad tracks and did not see or hear a train approaching. Both individuals began walking along the bridge. Ms. Murphy stated she did not use binoculars as she had been previously instructed by Kathleen Henderson, Lead Field Biologist at that time. While on the bridge, Mr. Bauman alerted her that a train was approaching from the north end of the track. It was not until this time that she heard the train horn. They quickly exited the bridge, with Ms. Murphy jumping onto a side embankment to avoid the train. Ms. Murphy did not immediately bring the incident to Ms. Henderson's or management's attention.

According to a follow-up interview with Ms. Henderson, it was not until after the March 11, 2006, incident involving Jennifer MacLean (DOI OIG Report of Investigation, Case No. PI-PI-07-0488-I), that Ms. Murphy mentioned the incident to Ms. Henderson in passing. Ms. Henderson stated she was not aware Ms. Murphy had jumped onto an embankment to avoid the train until this interview.

According to Dr. Takekawa and Ms. Athearn, they were not aware of any incident involving Ms. Murphy or Mr. Bauman at the railroad bridge.

## DISCUSSION

According to interviews with Ms. Murphy and Ms. Henderson, an incident involving crossing the railroad bridge to access the salt ponds did occur in 2005, but was not reported to management. Ms. Murphy stated that at the time of her initial assignment to the Island Ponds she was told she needed to check for approaching trains using binoculars before crossing the bridge. Dr. Takekawa and Ms. Athearn stated that employees, prior to the March 11, 2006, incident, were being instructed to check for approaching trains and to be aware of their surroundings while on the bridge.

After the March 2006 incident, the San Francisco Bay Estuary Field Station developed a written Job Hazard Analysis (JHA) addressing the proper procedure to access the Island Ponds. The JHA is presented to personnel prior to assignment at the Island Ponds and the presentation is documented. In addition, a train schedule is provided to personnel and personnel are instructed to use the schedule to assist in safely accessing the Island Ponds.

Accessing the Island Ponds by boat is not considered to be as safe as using the bridge, according to Dr. Takekawa and Ms. Athearn. No dock is available for launching or securing boats at the site, and tidal conditions make access difficult across exposed mudflats.

During the site visit, it was noted the terrain is flat and there is good visibility for 2 to 3 miles on either end of the bridge. The bridge is equipped with a pedestrian walkway on each side of the tracks. It took 3 minutes and 20 seconds to walk across the bridge at a leisurely pace. Train horns could be heard in the distance. Only one commuter train crossed the bridge within the 30-minute period the inspector spent at the site. It took 1 minute and 30 seconds for the train to

cross the bridge from the curve in the track north of the bridge. The train was timed after the investigator walked back to the bridge to see if a train was approaching. There is about another mile of visibility prior to the curve where a train can be spotted.

## CONCLUSIONS

The San Francisco Bay Estuary Field Station has implemented the JHA and there is heightened sensitivity among management to the risk of crossing the bridge. By developing and using the JHA to instruct personnel on properly crossing the bridge to access the Island Ponds, visually checking for trains using binoculars, using the train schedule, and maintaining awareness while crossing the bridge, the risk has been mitigated so that USGS personnel can cross the bridge safely. The results of the supplemental investigation focused on the 2005 incident do not affect the conclusions contained in the initial, November 2007 OIG Report (Case No. PI-PI-07-0488-I).

This investigation was conducted by Anthony E. Zepeda, CIH, Bureau Industrial Hygienist, Safety and Health Management Branch, USGS.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

July 16, 2008

Ms. Amy Holley  
Chief of Staff  
Office of the Assistant Secretary for Water and Science  
U.S. Department of the Interior  
1849 C Street, N.W., Mail Stop 6640  
Washington, D.C., 20240

Re: OSC File Nos. DI-07-1993 and DI-07-2225

Dear Ms. Holley:

The U.S. Office of Special Counsel (OSC) received disclosures from Angela Rex, a whistleblower at the Department of the Interior (DOI), United States Geological Survey (USGS), Western Ecological Resource Center, San Francisco Bay Estuary Field Station, Vallejo, California,<sup>1</sup> and from a second anonymous whistleblower. Ms. Rex and the anonymous whistleblower allege that workers, who have limited visibility of oncoming trains, must cross an active railroad bridge to perform water quality tests. Ms. Rex also alleged that employees must handle explosives without sufficient safety training, and the explosives are transported and stored in unsafe conditions.

Special Counsel Scott J. Bloch required the Honorable Dirk Kempthorne, Secretary of the Interior, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary tasked the Office of the Inspector General (OIG) with conducting the investigation. In a letter dated September 12, 2007, Secretary Kempthorne delegated authority to Acting Assistant Secretary Kamaran Olney to respond to the § 1213(c) referral. OSC received the agency's report dated January 15, 2008, and subsequently submitted it to the whistleblowers for comment as required by statute.

In reviewing the whistleblower's comments, OSC became aware of a fourth safety incident related to crossing the railroad bridge. According to the whistleblower, approximately two weeks before a safety incident involving USGS employee Jennifer MacLean on March 11, 2006, Biological Science Technician Ann Murphy and Intern Michael Bauman were forced to run across the railroad bridge to avoid an approaching train. Mr. Bauman made it safely across the railroad bridge, but Ms. Murphy was forced to jump into the marsh below.

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<sup>1</sup> Initially, Ms. Rex requested that she remain anonymous. However, she has since consented to the release of her identity.

Ms. Amy Holley

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OSC contacted Keith Kuczka, DOI OIG Senior Investigator, who conducted the investigation. Mr. Kuczka was unaware of this additional incident. We then spoke to Alan Boehm, Office of Inspector General, who informed this office that the OIG would not conduct any additional investigation into this matter. Mr. Boehm directed us to contact your office.

In order to consider all material facts related to this matter, OSC now requests a supplemental report to address the details of the incident involving Ms. Murphy and Mr. Bauman. This supplemental report should include interviews with Ms. Murphy and Mr. Bauman as well as a determination of what effect, if any, the results of the supplemental investigation of this incident have on the conclusions of your January 15, 2008, report. In addition, it appears that Ms. MacLean was not interviewed although one of the cited safety incidents involved her, therefore, an interview of her is requested.

If you need further information, please contact my staff attorney Kevin Wilson at (202) 254-3621. I am also available for any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Catherine McMullen".

Catherine McMullen  
Chief, Disclosure Unit

CAM:KPW/kpw



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



JUL 31 2008

Honorable Earl E. Devaney  
Inspector General  
U.S. Department of the Interior  
Washington, D.C. 20240

Dear Mr. Devaney:

As you know, a July 20, 2007, letter from Special Counsel Scott J. Bloch to the Secretary forwarding the allegations of the whistleblower was sent to your office on August 17, 2007, for investigation. In a September 12, 2007, letter to the U.S. Office of Special Counsel (OSC), the Secretary also delegated to me the authority to review and respond to the Inspector General's report. Your office investigated the allegations and in November 2007 provided a report to the U.S. Geological Survey (USGS) that the allegations that workers were exposed to substantial and specific danger when crossing the active railroad bridge was not supported. The report was submitted to the whistleblowers for comment, as required by statute, and in reviewing those comments, OSC became aware of a fourth safety incident related to crossing the railroad bridge. The OSC is now requesting a supplemental report to address the details of this incident.

Specifically, on July 16, 2008, my office received a letter from Catherine McMullen of the OSC asking for additional investigation into allegations that employees of the USGS, Western Ecological Resource Center, San Francisco Bay Estuary Field Station, in Vallejo, California, were exposed to substantial and specific dangers to public safety.

Based on the earlier delegation given to me by the Secretary to respond to the OCS on this issue, I am forwarding OSC's request to your office for further investigation of the allegations and the preparation of a report of your additional findings regarding this alleged incident.

We are required to submit the supplemental report to the OSC within 60 days of the receipt of the OSC letter. OSC has given us until September 18, 2008, to complete the investigation. They are not, at this time, amenable to any additional extensions of time to complete the report.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me as soon as possible.

Sincerely,

(Acting For..) Kameran L. Onley  
Acting Assistant Secretary  
for Water and Science

cc: Associate Solicitor, Division of General Law



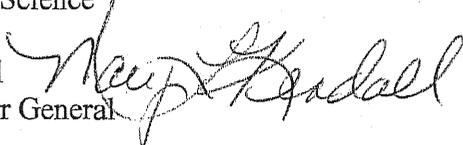
# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, DC 20240

AUG - 7 2008

## Memorandum

To: Kameran L. Onley  
Acting Assistant Secretary  
for Water and Science

From: Mary L. Kendall   
Deputy Inspector General

Subject: Request for Supplemental Investigation by OSC

In a letter dated July 31, 2008, you requested that the Office of Inspector General (OIG) conduct a supplemental investigation concerning a fourth safety incident related to U.S. Geological Survey (USGS) employees crossing a railroad bridge at the Don Edwards San Francisco Bay Estuary national Wildlife Refuge based on a request by the Office of Special Counsel (OSC).

The OIG must respectfully decline your request. We also declined the direct request for a supplemental investigation by OSC.

OSC suggests that they need a supplemental investigation and report “[i]n order to consider all material facts related to this matter.” In fact, they do not. The OIG report, dated November 8, 2007, included all relevant information concerning the safety of crossing the bridge upon which the fourth incident was alleged to have occurred. Further inquiry into this fourth event would not shed additional light on the fundamental safety of the bridge. That two USGS employees allegedly felt compelled to run and/or jump from the bridge when a train approached does not change the conclusion that the bridge walkway is safe to walk or stand on when ordinary caution and awareness are utilized. It is counterintuitive to suggest that an incident occurring prior to the incidents already investigated could result in a different outcome or conclusion.

Unless USGS has an internal report related to this fourth incident, we would suggest that USGS consider the incident as related by OSC as true, and determine whether it provides any additional insight to the OIG report or changes the conclusions contained in your January 15, 2008 response to OSC.