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DISPUTE RESOLUTION

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December 23, 2010

Hon. John Kroger
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

Re: Review of Brent Foster's Work at the Department of Justice

Dear Attorney General Kroger:

Pursuant to your request I have conducted an independent review of the Brent Foster's work while he was employed at the Oregon Department of Justice. This review consisted primarily of a comprehensive examination of Mr. Foster's email correspondence during this period of employment.

To assist me in this process I was provided by your office with a laptop computer onto which had been downloaded all of Mr. Foster's email correspondence for this period of time. A number of keyword searches had already been performed to assist me in this review. Among others these included the following: Bandon Pacific, Boardman, LNG, FERC, Bradwood Landing, Jordan Cove, Oregon LNG, Port of Astoria, Northern Star, Palomar, pipeline, and Stauffer, as well several others.

In the course of my review I looked at in excess of 10,000 emails. These included all of the emails identified as containing any of the keywords and phrases. At some point, I also determined that would be appropriate that I look at all emails generated and sent by Mr. Foster using his office email account during the course of his employment. As this was a frequent means of communication by Mr. Foster, this involved reviewing approximately 7,000 emails.

Your engagement letter with me made it very clear that I had open and unfettered access to you and any of your staff in conducting this review. In that vein, I did speak with the following person's in your office: Mary Williams, David Leith, Tony Green, Keith Dubanevich and to you personally.

Although they were available to me, after my review of the thousands of emails, I did not see any purpose in interviewing other staff members in your office, for as I describe below I did not find indication that interviewing them would lead to evidence of wrongdoing by Mr. Foster.

It was not part of the scope of my review to attempt to gain access to Mr. Foster's personal email accounts, nor to interview individuals outside of the Department of Justice. However, I would add that nothing that I learned during my review gave me any reason to ask to expand the scope of my review in such a manner.

There were three persons outside of the employ of the DOJ who I spoke with during this process. The first was Allison Rhodes, who represents Mr. Foster. She offered her client's cooperation in this process. At one point, I did consider interviewing Mr. Foster. Because of the criminal investigation that was ongoing at that time through the Marion County District Attorney's office, I concluded that it was not prudent for me to do so while the matter was being investigated by that office.

Upon learning that the Marion County District Attorney's Office had concluded their investigation I did speak with DDA Paige Clarkson. The purpose of that conversation was to determine whether she had learned of any information that would warrant further investigation prior to my completing this report. From that conversation I concluded that no further investigation would be warranted by me and that there was no reason to not complete my report at this time.

I also spoke with a representative from the Oregon Department of Agriculture (DOA). That Department had some specific concerns about Mr. Foster's interaction with an outside advocacy group and how that interaction was used to attempt to influence DOA policy direction. Based upon my understanding of the issue it was not of the nature that would generate criminal or ethical violation referrals by me or by the DOA.

However, after that conversation, I followed up with a further review of Mr. Foster's emails to determine whether it appeared that any information gained from the Oregon DOA by Mr. Foster had been improperly provided to third persons. I did not find any such evidence.

Separate and apart from conclusions regarding his actions, nothing in my review of Mr. Foster's work, or in my conversations with third parties, gave me any reason to believe that there had been illegal or unethical actions taken by you or others in your office.

Specifically, my charge included the following:

- (a) To identify and refer any evidence of criminal wrongdoing by Mr. Foster to the Marion County District Attorney.

I found no such evidence of any criminal wrongdoing and therefore I did not make any such referral to the Marion County District Attorney.

- (b) To identify and refer any evidence of ethical impropriety by Mr. Foster to the Oregon State Bar (OSB) and/or the Oregon Government Ethics Commission (OGEC).

During this review I did find several scattered examples of personal emails generated and received by Mr. Foster during the course of his employment. However, with one possible exception these do not rise to the level of frequency and/or nature that would create the basis for me to have initiated such a report to the OSB or the OGEC.

Mr. Foster received a series of emails from a judicial candidate and her campaign staff over a period of several months. His response to these appears to have been totally appropriate in that he repeatedly advised the authors of these emails to him that they should stop using his DOJ email address and should instead address any such correspondence to his home email account.

Over the period of his employment Mr. Foster also received occasional emails from friends and acquaintances in what could be called the environmental movement. Some of these were purely personal, some were seeking his attendance at events and some were seeking advice. Mr. Foster's responses to these emails did not appear to violate the OSB or OGEC rules in any way, nor did his responses ever appear to disclose inappropriate information about any clients being represented by the DOJ.

The one instance that did require a second look was a series of personal emails in late 2009 that relating to permit approval and installment of solar panels at Mr. Foster's personal residence. Included in these were emails from Mr. Foster to a Wasco County official in regard to the approval of his permit for installation. Time was apparently of the essence to Mr. Foster as he expressed that he needed the process completed before the end of the year in order to avail him self of certain tax credits.

It would not seem appropriate for these to have gone out using his government email account and using his government title below his signature on the emails. However, it does not appear that he was seeking or that he was granted any special treatment in the permitting process. Therefore, I will not be reporting this conduct to either the OSB or OGEC.

However, I appreciate someone else may determine that further investigation may be warranted on this issue.

- (c) To determine whether Mr. Foster gave legal advice regarding LNG matters that was not authorized by or that was deviating from the advice given by Associate Attorney General David Leith or by the Attorney General.

Bottom line, I uncovered no such evidence. The large majority of the emails generated by and received by Mr. Foster were internal emails circulated inside the Department of Justice. Clearly, Mr. Foster had strongly held beliefs. However, all of the material I reviewed indicated that he was very cautious in assuring that before he rendered any legal advice regarding LNG issues, that this potential advice was thoroughly vetted through Mr. Leith and/or several other of his colleagues at the Department of Justice.

As a footnote I should mention two things:

- (1) Two of the emails I reviewed contained Mr. Foster's social security number. I will be happy to identify those for your office so that this information can be redacted before his emails are released as part of any public records request.
- (2) As I expect you are no doubt aware a large number of these emails contain clearly privileged communications. Therefore, I would suggest a close examination of these emails will be required in response to any such request.
- (3) At some point in this process I also became aware of a video circulating on You Tube, in which someone who is purported to be Mr. Foster is purported to be involved in the use of marijuana. From the date stamp visible on the screen it is clear that this recording was made well in advance of Mr. Foster becoming employed by the DOJ. Therefore, it was outside the scope of my review and I took no action in regard to the video.

If you desire any further information on the nature of the my review or on my findings please feel free to contact me. Also, if you desire me to follow-up on any issues I will be happy to do so.

Thank you.

A handwritten signature in cursive script that reads "Dale R. Koch".

Dale R. Koch