



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

DEC 21 2012

Ms. Amber D. Abbasi
Cause of Action
2100 M Street NW, Suite 170-247
Washington D.C. 20037

Dear Ms. Abbasi:

This letter responds to your appeal of the October 3, 2012, decision by the National Park Service (NPS) regarding the information quality complaint that you submitted on behalf of Kevin and Nancy Lunny and Dr. Corey Goodman. Your appeal letter is dated October 16, 2012, and NPS received it on October 22, 2012. As an initial matter, we note that prior to this response and prior to the conclusion of the sixty-day period for NPS to respond, you filed a lawsuit that includes a claim on this matter. Although it appears you believe that a response to your appeal is no longer necessary, we believe it is nevertheless appropriate to respond.

We note that your information quality complaint appears to have been mooted by the Secretary of the Interior's November 29, 2012, memorandum, which announced his decision to allow the Drakes Bay Oyster Company's authorizations to expire by their own terms. That memorandum stated that the decision was "based on matters of law and policy," that the documents challenged in your complaint "are not material to the legal and policy factors that provide the central basis" for the decision, and that the decision was "based on the incompatibility of commercial activities in wilderness and not on the data that was asserted to be flawed."

Accordingly, the information challenged in your complaint has not been used and will not be used in a decision-making process, particularly now that the authority provided by section 124 of Public Law 111-88 has lapsed. An environmental impact statement (EIS) is a public disclosure document and cannot simply be withdrawn from the public domain, so there does not appear to be any further relief left for NPS to grant under section IV(G) of Director's Order 11B.

Regardless, we do not believe you have identified any errors in the Regional Director's October 3, 2012, decision denying your initial complaint or identified any new issues. As an initial matter, your appeal does not discuss, much less respond to, the threshold question of section 124 and its "notwithstanding any other provision of law" clause. The appeal's generic arguments that the consideration of IQA complaints is not "a matter of grace" are not relevant here. As explained in the October 3 response, the Information Quality Act is an "other provision of law" and the Secretary was not bound by it when exercising his discretion under section 124.

Similarly, your appeal fails to explain your complaint's failure to comply with the timing requirements of Director's Order 11B. As discussed in the response, section IV(E) of Director's

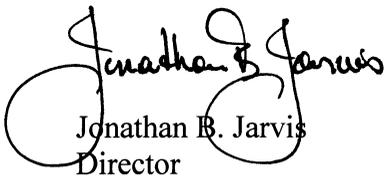
Order 11B provides that information quality complaints related to draft documents “will generally be treated as a comment on the draft document.” Comments are not excused from compliance with applicable time periods simply because they are submitted as information quality complaints. Moreover, even if your interpretation of that language were correct, neither your complaint nor your appeal address the requirements of the following paragraph, which provides that an IQA complaint will not be considered prior to a final action where it would “unduly delay issuance of the agency action.” Clearly a seventy-page complaint submitted eight months after the close of the comment period does not meet this requirement, nor could the National Environmental Policy Act process function properly if agencies were compelled to accept such complaints. This is further confirmed by the language cited in your appeal (at page 4), which confirms that if an information quality complaint is received late in the process, when it could have been submitted as a timely comment, then it is to be considered “to have no merit.”

Further, we believe we have addressed in the final EIS the concerns that you raised in your initial complaint. In response to the body of public comments, we consulted additional articles from the scientific literature, conducted additional analyses, and used additional information provided to us as part of the public comment process to address questions and concerns of fact. We left the analysis of wilderness intensity largely as presented in the draft EIS because these intensity determinations are matters of policy and interpretation, not scientific fact.

We used the Atkins Report as a peer review report that called our attention to scientific concerns identified by the report’s authors in the draft EIS. We similarly used the National Research Council report as a peer report that raised scientific concerns. We did not cite the Atkins Report as an independent source of scientific facts or information. As stated in the October 3, 2012, response, the Atkins report is an independent assessment of the quality of the science in the EIS, and is neither “information” nor “disseminated” under Director’s Order 11B and the Information Quality Act.

In conclusion, we find that your appeal presents neither a basis to conclude that the October 3, 2012, decision was in error nor any new information. Accordingly, your appeal is denied.

Sincerely,



Jonathan B. Jarvis
Director