

United States Senate

June 9, 2016

Ms. Susan F. Beard
Assistant General Counsel
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Ms. Beard:

I write to express my concerns about your responses to my written questions sent following your confirmation hearing to be the Inspector General at the Department of Energy (DOE). I am specifically troubled by your involvement in what the Government Accountability Office (GAO) has repeatedly characterized as DOE's "violation of the miscellaneous receipts statute, 31 U.S.C. § 3302(b)." This law was enacted to ensure the executive branch does not circumvent Congress' power of the purse under the Constitution. Whether or not you agree with GAO, questions about DOE's compliance with this statute must not go unresolved. For this reason, I will oppose your nomination until you (or DOE) provide a practical and credible way to resolve this dispute.

In 2006, the Senate Committee on Energy and Natural Resources asked GAO for an opinion on the legality of DOE's transfer of \$62 million of excess uranium to USEC in exchange for decontamination services. In a letter, dated July 12, 2006, GAO found that DOE "violated...the miscellaneous receipts statute." GAO explained that "When DOE directed USEC to receive, retain, and use proceeds from the sale of government-owned uranium to compensate USEC for expenses it incurred on behalf of the department, DOE improperly augmented its appropriations by \$62 million." To cure this violation, GAO recommended that "DOE should either seek and obtain congressional ratification of its use of the proceeds or adjust its accounts by transferring \$62 million from its appropriation to the miscellaneous receipts of the Treasury."

In 2009, Congress again directed GAO to examine whether DOE's management of its excess uranium was consistent with federal law. In a September 2011 report, GAO found that DOE "violated the miscellaneous receipts statute" in transactions in which DOE transferred over \$256 million of excess uranium to USEC and Fluor-B&W in exchange for decontamination services. GAO explained that DOE "was required to deposit an amount equal to the value of the uranium into the Treasury" and "By not doing so, DOE has inappropriately circumvented the power of the purse granted to Congress under the Constitution."¹ GAO recommended that *if* Congress sees merit in using the proceeds from excess uranium to pay for decontamination services, it should

¹ GAO's report further explained that: "When Congress makes an annual appropriation to an agency, it is also establishing an authorized program level. In other words, Congress is telling the agency that it cannot operate beyond the level it can finance under its appropriation. To permit an agency to operate beyond this level, with funds derived from some other source without specific congressional approval, *would amount to a usurpation of Congress's constitutional prerogative to appropriate funds*. Restated, the objective of the rule against augmentation of appropriations is to prevent a government agency from *undercutting Congress's constitutional 'power of the purse' by circuitously exceeding the amount Congress has appropriated for that activity.*" (emphasis added).

authorize the sale of excess uranium and provide DOE (or allow DOE to keep) the sale proceeds.

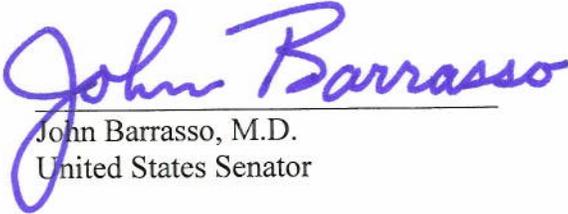
Following GAO's report, Congress has not authorized sales of excess uranium to pay for decontamination services and for good reason. DOE's transfers of excess uranium artificially depress uranium prices which hurt uranium producers in the United States. DOE's data show that uranium production in the U.S. "has recently been near historic lows" and that employment is now at "the lowest [level] since 2004." (DOE's data does not include the jobs lost since January 1, 2016, including the elimination of 85 jobs announced by Cameco Resources in April.) Of course, the fact that Congress has not authorized sales of excess uranium for this purpose does not, in any way, relieve DOE of its obligation to adhere to the miscellaneous receipts statute.

Since 2004, you have served as the Assistant General Counsel for General Law, which has the responsibility for ensuring DOE complies with the miscellaneous receipts statute. However, during your tenure, DOE has transferred nearly \$2 billion of excess uranium in violation of this law. Your testimony indicates that you helped establish the key precedents for these ongoing violations. Specifically, you stated that you provided legal advice with respect to DOE's transfer of \$62 million of excess uranium to USEC – the subject of GAO's 2006 letter. You also testified that you contributed to DOE and USEC's written agreement, underlying that transaction. Finally, you said you contributed to DOE's responses to GAO, disputing GAO's 2006 and 2011 findings.

While I fully support filling the position of Inspector General at DOE, questions about DOE's compliance with the miscellaneous receipts statute must not go unresolved. I, therefore, ask you again to provide a practical and credible way to resolve this dispute. If you are unwilling or unable to do so, I would respectfully ask that you withdraw your name from consideration.

Thank you for your attention to this matter and I look forward to your prompt response.

Sincerely,


John Barrasso, M.D.
United States Senator

Cc: Ernest Moniz, Secretary of Energy
Steven Croley, General Counsel, Department of Energy