

OPENING STATEMENT

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“NSF’s Oversight of the NEON Project and Other Major Research Facilities Developed Under Cooperative Agreements”

Joint Subcommittee Hearing

February 3, 2015

Thank you Mr. Chairman, I want to start by saying that I join all my colleagues in expressing my dismay that NEON used its management fee to pay for lobbying and alcohol and employee morale. I think we can all agree that we cannot support these actions. I also want to recognize NSF and NEON for adopting reasonable limits on what their management fee can be spent on going forward.

There is no doubt that some of my colleagues see advantage in the negative headlines that have come with the NEON story because they can point to those confused claims as evidence that NSF is not a careful steward of taxpayer dollars. This situation might even be viewed by some as justifying the Chairman's continued effort to question peer-reviewed NSF grants for studies that the Chairman thinks sound funny.

That said, I want us all to fully appreciate where the pursuit of NEON may lead. Across the government, management fees have always been treated the same as a profit--that is, they are the company's money. In that regard, I would note that our staff contacted GAO when we were seeking a witness because GAO is expert on contract matters. However, staff found that when it came to fees and their uses, the GAO had nothing to say because they do not audit fees or profits.

So if we are going to move the goal line for NEON and start asking how their fee can be spent and who controls it, we are on a path to tackle the broader question of what everyone else who does business with the Federal government does with their fees and profits. For example, major defense contractors do the great majority of their business with the Federal government. Those same companies spend tens of millions of dollars annually on lobbying. The amounts they spend daily on lobbying dwarf the amounts that NEON spent in an entire year.

If we are serious about ending such activities, we would have to introduce a bill to put significant restrictions on all companies' Federal profits and fees. We could adopt such a law if we are serious about this issue, but I suspect our outrage is going to begin and end with this one little environmental non-profit.

I also want to point out the absurdity of being outraged at NEON for using their fee to pay for unallowable costs. That is because under the guidance for management fees, OMB makes clear that--by definition--fees can ONLY be used for unallowable costs.

Thus, the idea that NSF and NEON colluded to defraud the government into paying for unallowable costs by establishing a fee would implicate contracting officers all the way back to the Kennedy Administration at agencies across the government. Essentially, the NSF Inspector General has made a referral to Justice calling for criminal prosecution of NSF and NEON employees for doing exactly what the law permits them to do. It is hard to see how that represents fraud.

The management fee represents less than 1/2 a percent of the contract costs of the NEON project. The bigger questions--and bigger money--are associated with whether NSF has appropriate policies to estimate project costs, including contingency costs, and whether these policies are consistent with OMB guidance.

The NSF IG questions the use of contingency and the way the cost estimate on NEON--and every other major equipment project at NSF--was done. NSF disagrees. As Dr. Buckius will testify, they have gone through the extensive audit disposition and appeal process as laid out at NSF. Having adopted reforms, they feel they are fully consistent with OMB's expectations for how to manage risk and estimate costs. A plain reading of OMB's updated regulations unambiguously supports NSF's position. Yet the IG continues to make every effort to have her views adopted.

To put it mildly, this situation is unfortunate, and it is demoralizing to the Agency's hard-working staff. But this Committee is not equipped to solve any of this today. The National Science Board, the Foundation's oversight board, is aware of these issues and has a good understanding of them. I hope that the Board will consider a careful review of NSF's practices and policies with respect to large facilities. If the Board identifies legitimate facilities management and oversight concerns, I would be happy to join my colleagues in appropriately addressing those concerns.

In the meantime, I intend to send a letter to GAO asking for a review of how agencies estimate costs for major R&D construction projects and how they set and manage contingency. GAO should look first at how NSF does it, and then provide some comparison to how other agencies do the same things. Perhaps GAO can help settle this impasse at NSF.

In closing, I hope we can keep our rhetoric and actions today measured and based on fact, and be clear that the issues to be considered, if we are serious, go far beyond one small environmental non-profit's use of its fee.

With that I yield back.