National Aeronautics and
Space Administration

Office of Inspector General
Washington, DC 20546-0001

July 13, 2010

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510-6125

The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510-6125

Dear Chairman Rockefeller and Senator Hutchison:

We write in response to your May 27, 2010, letter to the NASA Office of Inspector General (OIG) in which you requested an investigation into the circumstances surrounding NASA's reassignment of Jeffrey Hanley from his position as Manager of the Constellation Program. Among other issues, you asked us to examine whether Hanley's reassignment was related to his "well-publicized efforts to preserve the Constellation Program, consistent with Congressional enactments, notwithstanding the President's Fiscal Year (FY) 2011 Budget request calling for elimination of the program." By letter of June 1, we informed you that we would undertake a review of this matter.

We focused on Hanley's removal as Program Manager and did not examine the many legal and program-related issues related to Constellation currently under discussion at NASA and in Congress. A forthcoming report from the Government Accountability Office (GAO) is expected to assess NASA's adherence to language in FY 2010 appropriations law that bars NASA from ending Constellation or beginning a new exploration program without prior congressional approval. Moreover, the GAO review is expected to examine issues related to termination liability as interpreted by NASA and applied to Constellation contractors.[1]

Our review concluded that Hanley's reassignment was a management decision made by Douglas Cooke, Associate Administrator for Exploration Systems, with the concurrence of NASA Administrator Charles Bolden, taken after Hanley sent a series of e-mails to senior NASA officials that caused them to conclude that he could not effectively lead Constellation during a period when the President was seeking to cancel the program in the face of significant congressional opposition. We found that Hanley does not claim he was

[1] Termination liability refers to the estimated value of contractor work required to close out a contract if the contract is terminated.

retaliated against through this reassignment and we uncovered no evidence of unlawful reprisal. Further, we found no evidence that Hanley's reassignment was undertaken to preclude Congress from considering "meaningful alternatives" to the Administration's FY 2011 budget plan for NASA. Indeed, immediately after Hanley's removal as Program Manager NASA elevated Constellation's long-term Deputy Manager to serve as his replacement. Finally, we found that the reassignment comported with federal personnel rules.

Background

During this investigation, we interviewed 13 NASA employees including Administrator Bolden, Deputy Administrator Lori Garver, Associate Administrator Christopher Scolese, Associate Administrator for the Exploration Systems Mission Directorate Cooke, General Counsel Michael Wholley, Assistant Administrator for Human Capital Management Toni Dawsey, Director of Human Resources Leah Hollander, Johnson Space Center Director Michael Coats, Marshall Space Flight Center Director Robert Lightfoot, former Deputy and current Constellation Program Manager Lawrence "Dale" Thomas, Johnson Space Center Chief Counsel Bernard Roan, Director of Constellation Program Planning and Control Charles Stegemoeller, and Hanley. In addition, we reviewed thousands of e-mails, documents, and other internal NASA communications sent by officials at NASA Headquarters in Washington, the Johnson Space Center in Houston, Texas, and the Marshall Space Flight Center in Huntsville, Alabama.

The Constellation Program was initiated in November 2005 to develop flight systems to enable continued human access to space after retirement of the Space Shuttle and for future crewed missions to the Moon, Mars, and beyond. Hanley, a NASA engineer since 1989, was selected as Constellation's first Program Manager in late 2005 after spending years in progressively responsible assignments involving human space flight.

For FY 2010, Congress appropriated approximately $3.7 billion for NASA's exploration research and development activities, most of which was intended for Constellation. The appropriations bill contained language that barred NASA from using these funds for "the termination or elimination of any program, project, or activity of the architecture for the Constellation program."

On February 1, 2010, the President released his FY 2011 budget request which, among other things, proposed cancelling Constellation in favor of a different approach to human space exploration.[2] On several occasions between February and June 2010, Bolden and other NASA officials testified before congressional committees about the President's

[2] After release of its FY 2011 budget request, NASA officials initiated a dialogue with Constellation contractors to determine the potential costs associated with terminating the program and who should bear them. On February 22, 2010, the first so-called "termination liability" notification letters were sent to contractors soliciting their cost estimations should the program be cancelled. As a result, one of the questions now under debate is whether NASA or the contractors who received Constellation funds should be liable for costs related to shutting down the program if Constellation is cancelled.

budget request and, specifically, the proposal to cancel Constellation. At each of these hearings, the Administrator was questioned about whether NASA was adhering to the FY 2010 appropriations language that prohibited NASA from ending Constellation or beginning a successor program without congressional approval. In response to these questions, Administrator Bolden assured Members of Congress that NASA was following the law.

Of particular relevance to this review, at a May 26, 2010, hearing before the House Committee on Science and Technology, when questioned by Congresswoman Gabrielle Giffords about Hanley's removal as Constellation Program Manager, Bolden stated: "It was not an action that I took or directed – it would be an action that would be taken by the Exploration Mission Directorate head Doug Cooke and Johnson Space Center Director Mike Coats. I have been in consultation with them about that, and my understanding was that they were going to get together with him [Hanley] this morning."

Events Leading up to Hanley's Reassignment

On April 15, 2010, the President visited the Kennedy Space Center to outline his vision for NASA's future, a plan that included ending the Constellation Program and focusing on commercial transport to low earth orbit and funding of technology development for a mission to Mars. According to the President, "...pursuing this new strategy will require that we revise the old strategy. In part, this is because the old strategy – including the Constellation program – was not fulfilling its promise in many ways."

The day after the President's speech, Hanley sent an e-mail to Constellation staff in which he set forth his "Program manager's intent" in addressing Constellation's budget shortfall. In his e-mail, Hanley instructed Constellation staff to "continue program execution . . . in the event the program . . . will continue beyond FY10." He also instructed staff to prioritize their FY 2010 resources with a view to begin a flight test program for Orion (Constellation's Crew Exploration Vehicle) in order to achieve low earth orbit capability in 2017.

On April 23, 2010, *The Orlando Sentinel* published an article that characterized Hanley as disregarding White House goals for NASA as articulated in the President's FY 2011 budget request. Other reporters and bloggers picked up the story, with several portraying Hanley as a "rogue manager" who was openly defiant of White House space policy.

In response, Bolden and other senior NASA officials defended Hanley, arguing that his statements had been mischaracterized by the media and explaining steps Hanley had taken to ensure compliance with the FY 2010 appropriations language. For example, in an April 23 e-mail to a White House official, Bolden forwarded an annotated copy of Hanley's e-mail to his staff and described Hanley's directives as "in full compliance" with his instructions, noting that the e-mail was "taken out of context" by *The Orlando Sentinel*.

On April 28, 2010, Bolden traveled to the Johnson Space Center and spoke to an "all hands" gathering of NASA employees and contractors. Lori Garver, NASA's Deputy Administrator, told the OIG that the intent of Bolden's speech was "getting people on-board" with the decision to end the Constellation Program. In the speech, Bolden praised Hanley, stating "he's done everything I've asked him to do," but also made it clear that the decision regarding the future of Constellation had been made.

After attending the speech, Hanley sent Bolden an e-mail later that day with the subject line "Respectfully submitted." In the e-mail, Hanley thanked Bolden for his words of support, but requested that Bolden "hear us out" regarding Constellation. He told Bolden that "Walking away so lightly from a focused concerted effort to explore in our lifetimes should be reconsidered," and questioned Bolden for "decisions being made without yourself ever receiving a briefing from anyone in the program as to what we are all about." He continued that "to not hear our story, directly, and to hear NASA leadership and administration officials further spread the spin and accusations of others without giving us a chance to rebutt [sic] or respond, does not align with the core values you recited to us today."

In the e-mail, Hanley also raised questions about conclusions reached by the Review of Human Space Flight Plans Committee, stating that the "entire situation [with Constellation] was contrived." To cut the budget "and then stand up Augustine to find it unexecutable is downright reprehensible," Hanley wrote.[3]

During his OIG interview, Bolden characterized Hanley's April 28 e-mail as inappropriate and said that under "normal circumstances" he would have removed Hanley as Constellation Program Manager. However, Bolden said he decided against reassigning Hanley at that point, noting that the e-mail was most likely "frustration" on Hanley's part. Bolden said that Hanley was "conflicted" about the President's decision to end the Constellation Program because he had led Constellation for 5 years and thought the program was technically sound. Moreover, Bolden said that given Hanley's history with the program, Hanley would have difficulty doing what was needed with respect to transitioning workers off Constellation if and when the program was canceled.

Bolden told the OIG that he decided to have his staff discuss the e-mail with Hanley. He said that in conversations with his staff he expressed "disappointment" with Hanley's remarks and concern "with the message and its implications about Jeff's ability to lead the Constellation through this very challenging time ahead for us."

Christopher Scolese, NASA's Associate Administrator, told the OIG that Bolden shared his concerns about Hanley's April 28 e-mail and raised the question whether Hanley would be able to continue to manage Constellation if it was ultimately terminated. Scolese said that on May 8, 2010, he communicated Bolden's concerns to Hanley in a telephone conversation. According to Scolese, Hanley told him that he knew he had been wrong to

[3] "Augustine" refers to the "Review of Human Space Flight Plans Committee" chaired by Norman Augustine, former Chairman and Chief Executive Officer of Lockheed Martin Corporation. The Committee's final report was released in October 2009.

send the April 28 e-mail to Bolden, but assured Scolese that he could continue to serve effectively as Constellation Program Manager.

The following day, Cooke sent Hanley an e-mail advising him against sending Bolden "messages of this type in the future." Hanley responded that he agreed with Cooke's advice, noting that "I will certainly refrain in the future, assuming I still have one." He also expressed to Cooke his gratitude for "Charlie [Bolden] protecting me," but noted that he found '[t]he rhetoric that Charlie and others have resorted to in order to justify themselves . . . difficult in the extreme to stomach. . . ." Subsequently, in a May 16, 2010, interview with *The New York Times*, Cooke denied reports that Hanley had been insubordinate to NASA management.

On May 18, 2010, Hanley sent Cooke and other Constellation managers an e-mail in which he characterized NASA's position on termination liability as "unbecoming" as it pertained to Constellation contractors. Hanley wrote that NASA was putting Constellation contractors in an "untenable position," and that "work stoppages will be necessary" which "seems in conflict" with Congressional direction. Cooke responded to Hanley's May 18 e-mail by telling Hanley that officials at NASA Headquarters strenuously disagreed with his view on termination liability.

Our review confirmed that during this time frame Agency officials had been closely examining the termination liability issue and coordinating with the White House and Department of Justice about how it related to current Constellation contracts, the FY 2010 appropriation language, and the Anti-Deficiency Act. NASA General Counsel Wholley told the OIG that Hanley's May 18 e-mail contained inaccuracies and created needless "litigation risk" with respect to NASA's interactions with Constellation contractors.

We found that after receiving Hanley's May 18 e-mail, Cooke began taking substantive steps to reassign him, including consulting Wholley. Wholley told the OIG that he advised Cooke that there were no legal prohibitions to reassigning Hanley.

On May 19, 2010, Cooke met with Bolden concerning Hanley's future. Both men told the OIG that at this meeting they agreed that Hanley should be removed as Manager of the Constellation Program. Both men said Hanley's continued presence as Program Manager was creating too much controversy for Constellation and for Hanley himself– controversy that ranged from media descriptions of Hanley as anti-Administration and a rogue manager to what Cooke described as his repeated efforts in "cleaning up" after Hanley's e-mails. Cooke noted that Hanley had become such a media target that it was in the best interest of his career that he be moved. Bolden, Garver, and Cooke all told the OIG they received no direction from the White House to fire or reassign Hanley.

After this meeting, Bolden said he discussed Hanley's planned reassignment with Michael Coats, Johnson Space Center Director. Bolden said he wanted Hanley to remain at NASA and continue to make a contribution in his new position, and said he told Coats that "whatever happens I want to protect Jeff [Hanley]."

On May 26, 2010, Cooke and Coats met with Hanley and notified him that he was being reassigned to the newly created position of Associate Director of Strategic Capabilities at Johnson Space Center. In his interview with the OIG, Hanley characterized this news as a surprise, but said that upon reflection he realized that the reassignment was best for him and for Constellation.

Hanley told the OIG that he does not consider himself a "whistleblower" and is grateful that the reassignment did not require him to relocate to another NASA Center. He also said that he does not believe his reassignment, or other actions taken by NASA in connection with Constellation, will foreclose the ability of Congress to consider meaningful alternatives to the Administration's FY 2011 budget plan for NASA.

Similarly, Bolden and other NASA officials we interviewed denied that Hanley's reassignment was intended to foreclose Congress from developing alternatives to the Administration's budget proposal.

The same day Hanley was reassigned, Lawrence "Dale" Thomas, Deputy Constellation Program Manager since November 2007, was named Acting Program Manager. On June 14, 2010, Thomas was appointed Constellation Program Manager.[4]

Analysis and Conclusion

All the witnesses we interviewed – including Bolden and Cooke – described Hanley as an outstanding leader. Coats described him as the "one of the best Program Managers" he had ever seen. Scolese said he thought so highly of Hanley that he had been exploring "promotion opportunities" for him before the Constellation Program was proposed for cancellation.

However, several NASA officials also said Hanley was too "emotionally attached" to the Constellation Program after having served as its Manager for 5 years. Witnesses said this fact, coupled with the perception that Hanley had become a media "lightening rod," created unnecessary controversy for the Constellation Program and for Hanley himself during a difficult period when, according to senior NASA officials, the Agency was trying to adhere to the congressional language while at the same time positioning itself to implement the President's FY 2011 budget proposal that terminated the program. Accordingly, Bolden and Cooke said these factors led them to conclude that Hanley could no longer effectively lead Constellation.

In sum, we conclude that Hanley's reassignment was a management decision taken by Cooke with Bolden's concurrence in response to actions by Hanley that led senior NASA

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[4] Thomas began his NASA career in 1983 as an aerospace engineer in the Systems Analysis and Integration Laboratory. Since then, he has served as manager of the International Space Station Vehicle Analysis and Integration Team at Johnson Space Center, technical assistant to the director of the Marshall Center Systems Analysis and Integration Laboratory, chief of the Marshall Systems Test Division, and manager of the Marshall Systems Engineering Office.

leadership to believe that he could no longer effectively lead the Constellation Program. Although it was clear that Hanley disagreed with the plan to cancel Constellation, we found no evidence to suggest that he was reassigned in order to delay or thwart execution of Constellation or to foreclose Congress's ability to consider meaningful alternatives to the Administration's FY 2011 budget plan for NASA. Moreover, Hanley did not claim to us that he was retaliated against through this reassignment and we uncovered no evidence of unlawful reprisal. In addition, interviews and documents reviewed by the OIG reflect that Hanley's reassignment adhered to applicable personnel regulations and resulted in no change to his salary or work location.

Please contact me or Renee Juhans, OIG Executive Officer, at (202) 358-1220 if you have questions about our review.

Sincerely,

Paul K. Martin
Inspector General