Description of document:	Each response to a Question for the Record (QFR) provided to Congress by the Department of the Interior (DOI), 2014
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Source of document:	Freedom of Information Act Request Department of the Interior Office of the Secretary (OS) OS FOIA Officer MS-7328, MIB 1849 C Street, NW Washington, DC 20240 Fax: (202) 219-2374 Email: os_foia@ios.doi.gov

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, DC 20240

IN REPLY REFER TO:
7202.4-OS-2014-00280

August 18, 2014

Via email

On June 12, 2014, you filed a Freedom of Information Act (FOIA) request seeking the following:

> [C]opy of each response to a Question for the Record (QFR) provided to Congress by the Department of the Interior or its components.

We are writing today to respond to your request on behalf of the Office of the Secretary. Please find enclosed 178 pages which are being released to you their entirety. These records are for the dates January 1, 2014 through July 31, 2014.

To continue processing your request for documents from January 1, 2012 through December 31, 2013, you will incur charges. Our best estimate of the charge for cost of searching and reviewing the documents responsive to your request is between $200.00-300.00.

According to our regulations (43 C.F.R. §2.41), the Department charges the following fees for the processing of Freedom of Information Act requests:

Clerical search/review time	$6.00 per ¼ hour
Professional search/review time	$10.50 per ¼ hour
Managerial search/review time	$15.25 per ¼ hour
Photocopying	$0.15 per page

Please note that the time frame for processing your request will not resume until issues regarding the payment of FOIA fees have been resolved. Under the circumstances, you may:

a. Provide us with written assurance of your willingness to pay between $200.00-300.00 for the processing of your request.
b. Leave the scope of your request unchanged and ask us to process your request up to the amount you have already agreed to pay $30.00 (or some additional amount that is lower than our estimate of between $200.00-300.00 for the processing of your request).

c. Reduce the scope of your request, so as to limit the amount of search time and/or photocopying that would be required to process your request, such that your fee does not exceed the amount which you have agreed to pay.
d. Withdraw your request altogether.

According to our regulations, if we do not receive your written response within 20 working days from the date of this letter, we will assume that you are no longer interested in pursuing your request, we will not be able to comply with your request, and will close our files on it (see 43 C.F.R. § 2.49(c).

If you have any questions regarding any of the issues discussed in this letter, you may contact Cindy Sweeney by phone at 202-513-0765, by fax at 202-219-2374, by e-mail at os_foia@ios.doi.gov, or by mail at U.S. Department of the Interior, 1849 C St, NW, MS-7328 MIB, Washington, D.C. 20240.

Sincerely,

Clarice Julka
Office of the Secretary
FOIA Officer

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 2 7 2014

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman,

Enclosed are responses to follow-up questions from the oversight hearing on the government shutdown on October 16, 2013. These responses were prepared by the National Park Service.

Thank you for giving us the opportunity to respond to you on these matters,

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

Enclosure

Questions for the Record for Jonathan Jarvis, Director
National Park Service, Department of the Interior

United States House of Representatives
Committee on Oversight and Government Reform
and Committee on Natural Resources
Hearing on October 16, 2013

Questions from Representative Clay:

Gateway Arch Cooperative Agreement Questions

In my City of St. Louis, which hosts the Jefferson National Expansion Memorial Park, more commonly known as the Gateway Arch, there are many disappointed tourists, vendors, and Cardinals fans that cannot take the exciting ride to the top of the Arch. However, more importantly, this temporary government shutdown of the National Park Service is leading to a permanent shutdown of the Gateway Arch in St. Louis.

I am speaking of the one of a kind Cooperative Agreement the National Park Service has enjoyed for more than 50 years with the Bi-State Development Agency of the Missouri-Illinois Metropolitan District, which is a public agency created by a congressionally approved Compact between the states of Illinois and Missouri. As a result of this Cooperative Agreement, Bi-State is able to finance the trams that operate in the Arch, the fees derived from the Gateway Arch trams fully cover the operating and maintenance expenses associated with the trams, yet the Arch has been closed since the shutdown. These tram fees are also able to finance the construction of the visitors parking garage at the Memorial Park and provide day-to-day management of the attractions including the theater presentation and admission to the Memorial.

This Cooperative Agreement that facilitated these projects expired on January 1st, 2013. Since January 1st, 2013 there have been not one, but five short-term extensions of the agreement between the National Park Service and Bi-State. The current extension is scheduled to expire on November 30th, 2013.

The Congressional delegation from my state has been working with the National Park Service on this issue for quite some time, however because of this government shutdown these talks have stalled. Without an extension of this Cooperative Agreement and the current closure of the Gateway Arch, funds to operate the Memorial Park are severely diminished and will lead to a permanent shutdown of the Arch.

1. Is a long term extension of the Cooperative Agreement in sight? Will it be ready by the November 30th deadline and if not, why not?

Response: The Cooperative Agreement with Bi-State Development Agency of the Missouri-Illinois Metropolitan District was signed by the Director of the National Park Service on January 28, 2014. Because extensions were provided between November and January, there was no interruption of operations.

2. What is holding up the renewal of the Cooperative Agreement that has been a very beneficial agreement for the National Park Service? How can I assure my constituents that the Gateway Arch will continue to function?

Response: The lengthy renewal process was the result of consideration of numerous changes in Federal laws and regulations since the parties first entered into the agreement in 1962. Now that the Cooperative Agreement has been signed, the continuation of operations is assured.

Questions from Representative Huffman:

1. The sequester resulted in the loss of 900 permanent staff and 1,000 seasonal staff in FY13.

   a. How specifically did the loss in staff impact visitors and natural resource restoration and protection?

   b. Please list those 1,900 positions.

   c. Please list any additional positions if any that would be lost in the event of continuing the sequester in FY14.

Response: The NPS depends on dedicated employees to fulfill our mission and provide the high level of service that visitors expect; however, our ability to do that was diminished by the mandatory cuts from sequestration. The across-the-board reduction had widespread impacts at all parks, and all aspects of operations were affected as many critical positions went unfilled. The NPS left more than 1,900 positions unfilled because of the cuts. There were fewer personnel to support natural and cultural resource management, provide interpretive and educational services, protect visitors and employees, and perform critical maintenance. Positions were impacted in different ways: vacant permanent positions were left unfilled, subject-to-furlough and temporary seasonal staff had their tours of duty reduced, and some temporary seasonal personnel were not hired.

With the operating funding provided through the Consolidated Appropriations Act, 2014, for the remainder of fiscal year 2014, we anticipate that the most detrimental effects of sequestration should ease.

2. The US House of Representatives' most recent Interior Appropriations bill sought to cut the park budget by 4% from FY13 levels. Please summarize the projected impacts if those budget levels were enacted into law in terms

of the growth of the deferred maintenance backlog as a result of the construction cut, the threat of incompatible development absent LWCF funds, and other projected impacts.

Response: If appropriations for FY 2014 had been enacted at the House Appropriations subcommittee level, impacts to deferred maintenance and other areas of park operations that we experienced in FY 2013 would have been exacerbated.

In order to merely hold the backlog at a steady level of $11.5 billion, the NPS would have to spend nearly $700 million per year on deferred maintenance projects. To place that figure in perspective, the entire operating budget of the NPS in FY 2013 was $2.1 billion, post-sequestration. , NPS prioritizes funding to address the most critical needs in the most critical areas with available funds, and the remaining issues are delayed through partial fixes or "patches" until funding is available. Additional budget reductions will likely cause the maintenance backlog to grow, even with the judicious use of existing funds to address the NPS's most critical needs.

The Land and Water Conservation Fund provides funds to purchase lands within the park's authorized boundaries, and supports the administrative costs of the land acquisition program. At the end of FY 2013, there were more than 1.65 million acres of land, valued at $2.2 billion, within the park units' boundaries that were identified as threatened or necessary to appropriately support the park's mission. Funding levels in recent years have annually addressed less than 1% of these lands identified as a priority for acquisition. The threat of incompatible development increases when the National Park Service misses opportunities to acquire these lands.

3. There has been approximately a 70% reduction in the park service construction budget in today's dollars over the last decade. Please outline the impact of these construction cuts as well as reductions in the operations budget and their role in the growth of the deferred maintenance backlog.

Response: Funding for the NPS Line Item Construction program has varied from year to year, but the general trend in recent years has been one of decline. In FY 2013, funding stood at approximately $50 million (excluding Hurricane Sandy Supplemental Appropriations). Operations budgets have also experienced reductions recently. In FY 2010, the Operation of the National Park System appropriation stood at $2.261 billion; the FY 2013 pre-sequester level was $2.209 billion, and the post-sequester level was $2.097 billion. When operating funds are reduced, preventive maintenance and smaller rehabilitation projects are often postponed and deferred maintenance increases. Parks across the System have made difficult decisions to prioritize which facilities are repaired and which projects are deferred.

Questions from Representative Costa:

1. Director Jarvis, can you please estimate the total cost of the shutdown to NPS in terms of lost fee revenue, salary to furloughed employees who were not on the

job, the increase in deferred maintenance, gaps in scientific data collection and other costs associated with the disruption, ideally as an itemized list?

Response: The government shutdown significantly impacted the operation of the NPS. It resulted in the loss of an estimated $7.65 million in entrance and campground fee revenue, backcountry permits, boat rentals and other revenue sources. Additionally, although cost information is not available, the shutdown halted important natural, cultural, and scientific research, suspended work on high-priority deferred maintenance projects during the critical shoulder season between peak summer visitation and winter closures, delayed or cancelled community support and involvement, and most importantly, severely impacted National Park Service visitors and employees.

2. Can you please list as thoroughly as is realistically possible the facilities or other portions of parks that are still not open despite the end of the shutdown, because of the sequester and other budget cuts? If not a full list, then at a minimum a series of examples.

Response: Sequestration reductions that began in FY 2013 and the FY 2014 operating level under the continuing resolution have resulted in reduced visitor services and hours of operation at visitor centers, shortened seasons, and the closing of park areas when there is insufficient staff to ensure the protection of visitors, employees, resources and government assets. Examples of sequestration impacts include: Grand Canyon National Park offering fewer interpretive programs, longer lines at the main entrance to the park due to reduced staff at entry stations, and longer waits for backcountry permits; Yosemite National Park reducing visitor center hours and ranger programs; Blue Ridge Parkway closing campgrounds and picnic areas and reducing hours at visitor centers; and Rocky Mountain National Park hiring fewer interpretive rangers, requiring a reduction in the hours of operation of the visitor center, and reducing the number of interpretive programs offered.

3. One of your stated reasons for the need to close all 401 national park units during the shutdown was given the limited staff resources during the shutdown, prudent and practical steps were taken to "secure life and property at these national icons."

    a. Can you document a comprehensive list or else specific examples and the associated costs of vandalism in the national park units during the 16 day shutdown?

Response: The National Park Service recorded nearly 100 cases of vandalism, damage to property, and damage to archeological resources during the government shutdown. It is not possible to determine which, if any, of the specific violations were a direct result of the government shutdown. However, a sampling of such incidents include the destruction of solar-powered trail light bollards at Fort Smith National Historic Site, graffiti on a monument at Colonial National Historical Park, and damage to a building at New River Gorge National River. Cost information is not available.

b. Can you document specific examples and the associated costs to park natural resources impacted by the government shutdown because of trespassers?

Response: The National Park Service recorded over 500 trespassing violations during the government shutdown. No specific examples are available of any of these violations resulting in substantive negative impacts to natural resources. It is not possible to determine which, if any, of the specific violations were a direct result of the government shutdown. However, many of the trespassing violations recorded during this time were associated with acts of civil disobedience related to the government shutdown. Cost information is not available.

c. Additionally, there are reports of visitor injuries in national parks during the shutdown. Please provide a list of these incidents. What were the associated costs to the National Park Service to attend to these visitors? How many staff would have normally been available at that time to respond to those specific injuries?

Response: The National Park Service recorded 11 search and rescue incidents and nearly 50 requests for medical assistance involving Advanced Life Support during the government shutdown. It is not possible to determine which, if any, of the specific incidents were a direct result of the government shutdown. During this period, and consistent with the Antideficiency Act, the National Park Service retained a core of on-duty employees to ensure health and safety and regularly removed additional employees from furlough to on-duty when needed for emergency response. Cost information is not available.

4. H.R. 2775, Continuing Appropriations Resolution 2014, continues sequester spending levels through January 15th.

a. Please provide a complete list of the impacts incurred by the National Park Service because of the FY13 sequestration. If that is not possible, then please provide 5 - 10 specific examples from national park units throughout the country and a summary of the impacts as well as an explanation as to why there is no centralized database of these impacts.

Response: Sequestration reductions that began in FY 2013 and the FY 2014 operating level under the continuing resolution until the FY 14 appropriations have resulted in reduced visitor services and hours of operation at visitor centers, shortened seasons, and the closing of park areas when there is insufficient staff to ensure the protection of visitors, employees, resources and government assets. Parks deferred filling vacant staff positions and redistributed work to others. This strategy, while essential to living within the immediately reduced budget levels, cannot be sustained in the long term without

compromising all park operating functions. Parks also deferred purchase of supplies and materials, and reduced all non-essential travel and training, although most parks already have minimal expenses in these areas. Finally, most parks reduced or eliminated the hiring of temporary seasonal staff.

There is no central database of these impacts because developing, building and maintaining such a database would be very costly. However, parks were provided with sequestration and planning templates to categorize reductions and impacts. The following examples were compiled from the information submitted by parks:

- Reduced Visitor Access examples:
  - Great Smoky Mountains National Park closed three remote campgrounds and two picnic areas affecting approximately 54,000 visitors as a result of a reduction in seasonal staffing. (Tennessee: Abrams Creek Campground, Look Rock Campground, Look Rock Picnic Area. North Carolina: Balsam Mountain Campground, Balsam Mountain Picnic Area.)
  - Mount Rainier National Park closed the Ohanapecosh Visitor Center due to reduced staffing, affecting approximately 60,000-85,000 visitors.
  - Minuteman Missile National Historic Site ceased guided tours of the Delta-09 Missile Launch Facility due to staffing shortages, impacting approximately 49,000 visitors.
  - Glacier National Park reduced seasonal hiring at the end of the season resulting in less maintenance, mowing, rock removal, patching, striping, and shoulder dressing along the Going-to-the-Sun Road and other main park roads.
  - Catoctin Mountain Park closed its only visitor center for more than 50% of the time as a result of a seasonal staffing reduction, affecting approximately 40,000 visitors.

- Reduced Visitor Services examples:
  - Independence National Historical Park ended walking tours and on May 1, closed six of 14 interpretive sites, including the Declaration House (the site where the Declaration of Independence was drafted by Thomas Jefferson), the New Hall Military Museum, and the Todd House (home of Dolley Madison and her first husband John Todd), affecting approximately 140,000 visitors.
  - Jewel Cave National Monument and Wind Cave National Park, both located in southwestern South Dakota, each discontinued approximately 35% of cave tours daily in the high season.
  - Blue Ridge Parkway cut 21 seasonal interpretive ranger positions, affecting 584,000 visitors and resulting in the closure of ten developed areas (30%), creating a 50-mile distance between open facilities and thereby limiting contacts with park staff in this linear park.
  - Mammoth Cave National Park delayed hiring the park electrician and seven seasonal guides, resulting in closure of the most remote section of cave tours, and eliminating the Grand Avenue Tour and the Snowball Tour. This affected approximately 28,000 visitors.

- Kaloko-Honokohau National Historical Park was unable to repair boundary fences and other damage caused by high winter storm surge. Some trails were closed due to safety concerns, impacting approximately 500 visitors per day.

- Reduced Resource Management examples:
  - Yosemite National Park conducted less frequent trash pickup, had fewer campground staff, and reduced focus on food storage violations, all of which contribute to visitor safety concerns and increased bear mortality rates.
  - Pu'uhonua O Honaunau National Historical Park, Yosemite National Park, and Sleeping Bear Dunes National Lakeshore reported significant (over $2.5 million) losses of previous investments to control invasive plants. Many invasive species went untreated during the summer when they are most active.
  - At Sleeping Bear Dunes National Lakeshore, one third of the entire Great Lakes population of endangered piping plovers nest in the park. Due to a reduction in seasonal hiring, monitoring and protection of the federally listed species was reduced. Plover chicks and adults are more susceptible to death from human activities, washout, and predation. The park also curtailed follow-up control of the invasive black locust tree.

b. How will the continued sequester cuts in FY14 differ from the impacts of sequester in FY13? Would impacts be approximately the same as FY13 or greater? Please provide a summary as well as several illustrative examples.

Response: Under P.L. 113-46, Continuing Appropriations Act, 2014, the National Park Service operated at FY13 sequester funding levels through January 17, 2014. Parks continued to spend with prudence in all areas, including deferring replacing vacant staff positions. The widespread impacts of operating with a reduced workforce continued to be felt through diminished resource protection efforts, reduced maintenance and daily janitorial duties, and decreased interpretation, education and other ranger-led programs and services.

The Consolidated Appropriations Act, 2014, provided full year appropriations for FY 2014.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN - 5 2014

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Madam Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Committee's January 16, 2014, oversight hearing on *"Review of the President's Climate Action Plan."*

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable David Vitter
Ranking Member

Environment and Public Works Committee Hearing
January 16, 2014
Follow-Up Questions for Written Submission

Questions for Ashe

Questions from:

Senator Barbara Boxer

1. **Can you describe what climate change impacts the FWS is already seeing on the ground and what your scientists are telling you is expected in the coming years?**

   Response: Climate change is now among the greatest challenges facing the conservation of our native species and it is contributing to dramatic changes in the habitats they need for breeding, migrating, and wintering. In addition, climate change is impacting the dynamics of wildlife disease, which also threatens biodiversity.

   As the Earth warms, ecosystems adapted to cooler climates are altered, creating new habitat for some species and reduced habitat for others. Species distribution shifts in response to climate change can lead to a number of changes, such as the arrival of new pests, the disruption of ecological communities and interspecies relationships, and the loss of particularly valued species from some areas. Warmer temperatures cause changes to plant communities and shorten insect life cycles. This can lead to disruption in the annual appearance of these important food sources at times out of sync with bird migration and breeding cycles, further impacting ecosystems.

   Our scientists are observing a number of changes throughout the country, including: in the Arctic, record losses of sea ice over the past decade are affecting the distribution, behavior, and abundance of polar bears, animals that are almost completely dependent upon sea ice for survival. In the Southeast, rising sea levels are expected to flood as much as 30 percent of the habitat on the Service's coastal national wildlife refuges. In the Southwest, climate change is already exacerbating deep droughts, increasing pressure on water uses at national fish hatcheries and national wildlife refuges. In the Northwest, climate change is warming the landscape and enabling insect pests to expand their ranges and destroy ecologically and commercially valuable forests. Throughout the West, there is also clear evidence that wildfires have been larger and more severe since the mid-1980s.[1]

1

Westerling et al. (2006) compiled a comprehensive database of large wildfires in western United States forests since 1970 and compared it with hydroclimatic and land-surface data. They demonstrated that large wildfire activity increased suddenly and markedly in the mid-1980s, with higher large-wildfire frequency, longer wildfire durations, and longer wildfire seasons.

Dennison et al. (2014) used a database capturing large wildfires (> 405 ha) in the western US to document regional trends in fire occurrence, total fire area, fire size, and day of year of ignition (DOY) for 1984-2011. Over the western US and in a majority of ecoregions, they found significant, increasing trends in the number of large fires

2. **What are the consequences of not starting now to prepare our refuges and other conservation lands for the impacts of climate change?**

Response: Climate change is already beginning to impact national wildlife refuges and other important public lands. For example, observed sea level rise has already impacted coastal habitat used by shorebirds and sea turtles that nest on coastal national wildlife refuges. Dramatic and measurable loss of sea ice is impacting wildlife in the northern latitudes, where the impacts of climate change are most profound. The Service is already working with other entities to address these changes over the long-term and build resiliency; but, the longer these climate changes remain unaddressed, the more difficult and expensive they will be to deal with in the future as more lands are impacted.

3. **Hunting, fishing and other wildlife-recreation activities contribute billions of dollars to the U.S. economy every year. What impacts will climate change have on these activities?**

Response: According to the latest National Survey of Hunting, Fishing and Wildlife-associated Recreation, more than 90 million Americans participated in some form of wildlife-related recreation in 2011. These wildlife recreationists spent $144.7 *billion* on their activities. Because climate change is known to affect the distribution and abundance of species, the availability of culturally, commercially, and recreationally important species for human uses (e.g., fishing, hunting, watching) will change as species distributions respond to a changing climate and human population pressures. Availability of those species will ultimately affect subsistence and commercial use, recreation, tourism, and the economy.

Although we have not seen a comprehensive study of the economic impacts of such future changes across all components of the wildlife recreation sector, at least one recent effort was made to estimate such changes on freshwater recreational fishing component (Jones et al. 2013. Climate change impacts on freshwater recreational fishing in the United States *Mitig Adpat Strateg Glob Change* 18:731-758). The study found that coldwater fisheries are expected to decline in distribution and be replaced by an expansion of warm water fisheries. Because cold water fisheries are more economically valuable, the resulting losses from such shifts in the relative availability of the two fisheries between 2009 and 2100 were projected to be $81 million to $6.4 billion depending on the global emission scenario evaluated and the discount rate applied - this for just one component of the overall wildlife recreation sector.

In addition, hunting and fishing success, and the quality of experience, is highly dependent on environmental conditions, including temperature, precipitation, wind, water

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and/or total large fire area per year. Trends were most significant for southern and mountain ecoregions, coinciding with trends towards increased drought severity.

stages, tides, timing of insect hatches, etc. The greater uncertainties associated with climate change could cause subtle but important shifts in how people make decisions about participation.

4. **Do your partners in the hunting and angling communities believe that climate change is a serious issue that must be addressed?**

   Response: Yes. Hunters and anglers are often among the first to see impacts of climate change on species since they often directly observe when species shift their geographic ranges and are no longer common in traditional areas. For instance, geese that formerly wintered along the Missouri River in Nebraska and South Dakota now seem to migrate only as far south as North Dakota, to the dismay of waterfowl hunters. In the Arctic, changing ice conditions are threatening lifestyles and subsistence economics of indigenous peoples as well (e.g., making trips to hunting grounds longer and more hazardous).

   A broad-based coalition of hunting and fishing organizations published reports in 2008 and 2009 on the current and future impacts of climate change on fish and wildlife and called for increased action to help sustain these resources in a changing climate (Wildlife Management Institute 2008, 2009). This coalition included such major hunting and fishing associations and/or groups as: Ducks Unlimited, Trout Unlimited, BASS/ESPN Outdoors, Izaak Walton League of America, the Association of Fish and wildlife Agencies, the Coastal Conservation Association, the American Sportfishing Association, Pheasants Forever, and the Boone and Crockett Club.

Senator David Vitter

1. **I understand the Fish and Wildlife Service has gotten involved in an EPA rule being proposed to regulate waters that are used to cool power plants and other facilities. This 316(b) rule was supposed to be finalized last year, but has gone through a series of delays, and I'm concerned that your agency's involvement has caused further confusion as it relates to the Endangered Species Act.**

   a. **Can you tell me why your agency continues, after months, to review this EPA rule, because I'm concerned that if new layers of ESA requirements are layered on a national rule like this, it's going to set a dangerous precedent? As you know, this Committee has focused extensively on the "sue and settle" practice, and this seems to be yet another example of overreach where a new path to even more litigation will be created.**

   b. **Our local permit writers in our states won't have the flexibility they need to make decisions on a project-by-project basis. Mr. Ashe, do you support the EPA's clear finding in their Biological Opinion that this 316(b) once-through cooling rule clearly provides benefit to species in the way it's drafted?**

Response: The Endangered Species Act and its implementing regulations require Federal agencies to consult with the Fish and Wildlife Service (and the National Marine Fisheries Services, together as the Services) if the agency determines that their action "may affect" listed species or designated critical habitat.

As described in the letter dated June 18, 2013, EPA submitted a biological assessment that determined that the issuance and implementation of the proposed regulations may affect 215 threatened and endangered species and the designated critical habitat of 30 species. The biological assessment described the likely impingement or entrainment of endangered or threatened species and it is those effects that form the basis for the ongoing ESA section 7 consultation.

2. **As FWS coordinates Federal environmental efforts and works closely with agencies and White House offices in the development of environmental policies and initiatives, FWS plays a role in, utilizes, and is impacted by the SCC estimates.**

   a. **Did you participate in the development of these estimates in any way?**

   b. **Did you or any of your direct reports participate, provide assistance, technical analysis, or input of any kind during the development of and revisions to the SCC estimates in any manner?**

   c. **Please provide for the record which of your Agency's offices participated in the development of the SCC estimates, including the number of staff, hours, and other resources dedicated to such work, as well as any outside experts, entities or consultants who provided input, technical assistance or comments.**

   Response: The Service was not involved in the effort to develop a Social Cost of Carbon.

3. **Any ESA monitoring and study requirements must be focused on T&E species directly affected by the intake through entrainment or impingement. We understand that the proposed ESA provisions in 316(b) will require permittees to identify listed species that *may* be in the water bodies from which a facility draws water and *might be* indirectly affected by intake structures. How does such an approach comport with the Endangered Species Act or the Clean Water or 40 years of precedent?**

   Response: In a letter dated June 18, 2013, EPA requested ESA Section 7(a)(2) consultation with the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (together, the Services). The Services are now in consultation with EPA on the 316(b) proposal. When the Service issues its biological opinion and the EPA determines how to proceed with their final rule, we would be happy to discuss details of any provisions related to conservation of threatened or endangered species.

4. **The approach proposed to be used to incorporate proposed ESA provisions into the state 316(b) permitting process represents a dramatic departure from the current**

NRC-initiated Section 7 consultations procedure used for nuclear facilities that involves multiple federal agencies. Having the ESA consultation take place prior to submittal of a state permit application would shift the decision-making to a single federal agency. Rather, any ESA study or consultation should occur as an integral part of the current permitting process and not separately. What are your thoughts on this?

Response: As stated in the response to Q3, in a letter dated June 18, 2013, EPA requested ESA Section 7(a)(2) consultation with the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (together, the Services). The Endangered Species Act and its implementing regulations require Federal agencies to consult with the Services if the agency determines that their action "may affect" listed species or designated critical habitat. The Services are now in consultation with EPA on their 316(b) rulemaking. When the Service issues its biological opinion and the EPA determines how to proceed with their final rule, we would be happy to discuss details of any provisions relating to conservation of threatened or endangered species.

5. **How much has the FWS spent on climate change-related activities, including those in furtherance of the Climate Action Plan, since 2008?**

Response: The Service does not track all of the funding it may be using to address climate change issues. Climate change is one factor that should be considered in most planning documents, such as recovery plans and refuge CCPs, yet the Service does not attempt to determine how much planning funding is spent on those considerations.

The Service does identify specific activities that contribute to climate change in a landscape conservation cross-cut, which is attached below (in thousands of dollars).

Climate/Landscape Conservation	2010 Enacted	2011 Operating Plan	2012 Enacted	2013 Enacted	2014 Enacted	2015 President's Budget
Fish and Wildlife Service						
Cooperative Landscape Conservation	10,000	14,727	15,475	15,416	14,416	17,706
Adaptation Strategies	10,000	16,243	16,723	20,235	10,767	15,149
Partners - Private Lands	6,000	6,000	5,990	5,589	5,589	5,589
National Wildlife Refuge System	12,000	20,000	19,968	20,433	22,968	22,968
National Fish Habitat Action Plan	2,000	2,000	1,997	1,863	1,863	1,863
Science Support	0	0	0	0	2,500	2,500
Subtotal, Fish and Wildlife Service	**40,000**	**58,970**	**60,153**	**63,536**	**58,103**	**65,775**

6. **The purpose of the Endangered Species Act is to protect and conserve endangered and threatened species. Certain environmental groups believe the FWS should use the ESA to require the reduction of greenhouse gas emissions for activities that occur outside the range of species that are listed as threatened or endangered. How**

will you ensure that the Fish and Wildlife Service does not allow use of the ESA as a back-door mechanism to regulate greenhouse gas emissions?

Response: The Service is committed to ensuring that the ESA is implemented in a manner that is consistent with the Act's provisions and associated regulations. The Service continues to take the position that there is no basis for regulating greenhouse gas emissions under the ESA, and does not use any aspect of the Act for such a purpose.

7. **Please provide me with a list of species the Fish and Wildlife Service has listed as endangered using global climate change as the primary reason for listing the species.**

   Response: The Service has not yet listed any species as an endangered species based on the effects of climate change being the primary threat.

8. **Please provide me with a list of species that the Fish and Wildlife Service has listed as threatened using global climate change as the primary reason for listing the species.**

   Response: The Service has listed the polar bear as a threatened species based on the effects of climate change being the primary threat.

9. **Among the remaining species on the listing workplan that was developed after the 2011 closed door settlement agreements, please provide me with a list of species where climate change is expected to be cited as the primary threat to species recovery as you determine whether to list the species as threatened or endangered.**

   Response: We have proposed to list the wolverine and the red knot as threatened species due to the effects of climate change being the primary threats. Additionally, the Pacific walrus has been identified as a candidate species due in part to climate change.

10. **Please describe how the FWS determines whether climate change poses a threat to a species.**

    a. **How does the agency make use of climate models?**

    b. **How does the agency determine whether climate change models – or any other model relied upon to support an ESA determination – is verifiable and accurate?**

    c. **In any instances, have climate models used by the FWS to make a listing determination been inaccurate?**

    Response: (a) The Service considers information from science-based climate models regarding ongoing and projected changes in climate; these are most commonly expressed in terms of changes in average surface air temperature over time. Climate projections at a global scale are informative and in some cases are the only or the best scientific

information available. However, projected changes in climate can vary substantially across and within different regions of the world and therefore the FWS uses "downscaled" projections when they are available and have been developed through appropriate scientific procedures. Such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species and its habitat. The Service considers the uncertainty associated with the model projections as well as uncertainty about the effects on a species and its habitat; this information is included as part of the determinations.

(b) The agency uses information from models that have undergone scientific peer review. The administrative record for listing determinations always includes references for sources of information.

(c) Various climate models are routinely updated by scientists to improve and refine them. This often is reflected by the models being better able to characterize conditions and trends that already have been observed, which results in increased confidence in revised projections of future conditions. We are not aware of any instances in which the climate models used by the FWS to make a listing determination have been "inaccurate", although in some cases updated models are yielding projections that refine the magnitude and timing of likely changes.

Senator James Inhofe

1. **Mr. Ashe, on December 30, 2013, Richard Hatcher, Director of the Oklahoma Department of Wildlife Conservation, wrote to you about the American Burying Beetle (ABB). For years, entities operating within the range of the ABB were permitted to use the Baiting Away and Trapping and Relocation conservation measures to avoid taking the ABB. In April 2012, the Fish and Wildlife Service (Service) abruptly disallowed this practice; since then, the Service has not provided a new General Conservation Plan (GCP) with acceptable conservation practices. As a result, the only way to avoid a take of the ABB is to completely avoid its habitat. This has disrupted hundreds of millions of dollars in economic activity, and one company has even sustained losses of $12 million because the Service has failed to provide alternative conservation practices. In the letter, Director Hatcher outlines a series of steps that can address concerns that have been raised by critics of the two legacy conservation methods; he requests that these adapted methods be allowed while the Service continues work on the new GCP, which is not expected to be completed until December 2014.**

   a. **Will you approve Director Hatcher's request that the modified conservation practices be allowed during the interim time period?**

Response: On January 21, 2014, the Service provided a response to Mr. Hatcher's letter regarding the American Burying Beetle (ABB) and explained that while the Service appreciates his suggested modifications of the bait away and trap-and-relocate methods,

the modifications to reduce or minimize potential take of ABBs do not result in complete avoidance of take.

The Service decision to discontinue the use of the two methods, bait away and trap-and-relocate, was based on our ongoing review of scientific information related to conservation of ABB. A determination was made that neither method resulted in complete avoidance of impacts to ABBs. The best available information indicates that implementation of bait away and trap-and-relocate measures could minimize, but not avoid, take. Lacking adequate means of avoiding take, projects cannot proceed and remain in compliance with the Endangered Species Act (ESA). Consequently, in the absence of ESA permits for incidental take of the species, companies or individuals using these methods could risk violation of the ESA. We continue to work on the development and approval of the GCP, so that we will provide industry and private land-owners incidental take coverage and a more certain compliance vehicle for the ABB.

We anticipate making available an 18-month Industry Conservation Plan (ICP) for oil and gas and draft environmental assessment for the ABB in the coming weeks. The draft ICP will provide industry with a mechanism for incidental take authorization associated with construction, operation, maintenance, repair and decommissioning of oil and gas projects within a 45-county planning area in Oklahoma. The draft ICP also describes measures to minimize and mitigate impacts to the ABB and its habitat. There will be a 14-day comment period for the ICP and draft environmental assessment.

Senator Jeff Sessions

1. **On November 14, 2012, President Obama stated that "the temperature around the globe is increasing faster than was predicted even 10 years ago." Again, on May 29, 2013, the President stated: "We also know that the climate is warming faster than anybody anticipated five or 10 years ago." But the actual temperature data shows that is not correct. Do you believe the President was correct when making these specific assertions?**

Response: In matters related to climate data, the Service primarily relies upon the best available science as presented in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) and the draft 2013 National Climate Assessment (NCA) for the United States, produced under the auspices of the U.S. Global Change Research Program. According to the IPCC, "It is certain that Global Mean Surface Temperature has increased since the late 19th century. Each of the past three decades has been successively warmer at the Earth's surface than all the previous decades in the instrumental record, and the first decade of the 21st century has been the warmest." The IPCC indicates the U.S. average temperature has increased by about 1.5°F since record keeping began in 1895 with more than 80% of this increase having occurred since 1980. The most recent decade was the nation's warmest on record and U.S. temperatures are expected to continue to rise. Because human-induced warming is superimposed on a naturally varying climate, the temperature rise has not been, and will not be, smooth across the country or over time. For example, the NCA notes that observations of global

mean surface air temperature show short periods with little or even no significant upward trend (for example the periods 1977-1985, 1989-1996, and 1998-2006), whereas global temperature continues to rise unabated over long-term climate timescales.

2. **In your written testimony, you cited "more frequent and severe storms, flooding, droughts, and wildfires" as observations that support the policies outlined in the President's Climate Action Plan. This is a familiar assertion, and one that our committee has examined closely. Based on the testimony offered in our committee to date, it seems clear that the frequency of extreme weather events is not, in fact, increasing on climate timescales. For instance, Dr. Roger Pielke, who is a climate-impacts expert and agrees with the view that global warming is partly caused by human emissions, testified: "It is misleading, and just plain incorrect, to claim that disasters associated with hurricanes, tornadoes, floods, or droughts have increased on climate timescales either in the United States or globally." To support his view, Dr. Pielke provided specific data points to back up his assertion. Other witnesses provided similar testimony. Please provide the data you have personally evaluated to justify your claim that we are experiencing "more frequent and severe storms, flooding, droughts, and wildfires." In addition, please provide data you have reviewed that demonstrates that implementation of the President's Climate Action Plan will result in reductions in the severity and frequency of storms, floods, droughts, and wildfires.**

   Response: This question refers to testimony provided for the January 16, 2014 hearing entitled "Review of the President's Climate Action Plan" before the Senate Committee on Environment and Public Works Committee and was asked in a letter from Senator Sessions dated January 28, 2014. Please refer to our response to that letter dated, April 7, 2014.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN - 5 2014

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Subcommittee's February 27, 2014, legislative hearing on H.R. 3105, H.R. 3280, H.R. 3324, and H.R. 4032.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Gregorio Kilili Camacho Sablan
Ranking Member

Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Legislative Hearing
1334 Longworth House Office Building
February 27, 2014
1:30 p.m.

Legislative Hearing on

H.R. 3105; H.R. 3280; H.R. 3324; H.R. 4032

Questions from Chairman Fleming

PANEL 1: Mr. William C. Woody – U.S. Fish and Wildlife Service

(1). What is the current number of ongoing Lacey Act investigations? How many of these investigations involve potential violations of the 2008 Amendments?

RESPONSE: The Service currently has 626 ongoing Lacey Act investigations. Of those 626 investigations, 2 involve potential violations of the 2008 plant amendments.

(2). In the Gibson Guitar case, did the Fish and Wildlife Service review declaration documents before initiating its investigation?

RESPONSE: Our investigation of Gibson Guitar Corporation was initiated based on information received from a non-governmental organization that alleged that the company knowingly imported Madagascar ebony illegally sourced from Madagascar. Declarations were reviewed as part of the investigation.

(3). How many declaration documents including both paper and an electronic format have you received from the Animal and Plant Health Inspection Service (APHIS)? How many of these documents resulted in an investigation?

RESPONSE: The Service and our enforcement partners at the Department of Justice have received about 200,000 declarations from the Animal and Plant Health Inspection Service (APHIS). We review plant declarations collected by APHIS on an ad hoc basis, typically in connection with specific investigations.

(4). Why has the Fish and Wildlife Service not carefully reviewed or requested all of the more than 2 million declaration forms that have been filed since this legislation became effective on May 22, 2008?

RESPONSE: The Service received no funding for implementing the Lacey Act plant amendments. As a result, we lack the staff and budgetary resources to conduct such reviews on a routine basis. Typically, the agency (in this case, APHIS) tasked with collecting trade data is

responsible for monitoring such submissions for accuracy and completion. (For example, Service wildlife inspectors routinely review wildlife declarations as part of the shipment inspection and clearance process for wildlife imports and exports.)

Access to specific plant declarations on request has helped investigators document suspected import violations. We also note that the declaration process itself represents an important tool for promoting compliance with plant protection laws and requiring due diligence from importers, who are now held responsible for knowing what they are buying and where it comes from as they engage in trade of timber, plants, and plant products.

(5). There are currently a number of farmers who ship live farmed raised catfish, trout, tilapia, salmon and crawfish to various processing facilities both in-state and out of state. What are the potential civil and criminal penalties if one of the Service's 216 special law enforcement agents finds zebra mussels or Asian carp in a 20,000 pound shipment of fish? What would be the estimated value such a shipment? How could a farmer recover the cost of losing a shipment?

RESPONSE: The interstate transport of a federally listed injurious species, such as zebra mussels or Asian carp, violates the injurious wildlife provisions of the Lacey Act (18 U.S.C. 3571). The maximum penalty for such a violation is six months in prison and a fine of $5,000. However, it is important to note that there have been no federal prosecutions of aquaculturists who unknowingly shipped injurious species in shipments of otherwise legal products. The Service focuses its investigations on those who knowingly transport such species in interstate commerce.

We cannot estimate the value of the shipment you describe. Companies that forfeit property in connection with violations of Federal laws are not compensated by the government for their losses.

(6). Please provide the Subcommittee with the details of any and all cases over the past five years involving the federal prosecution under the Lacey Act of farmers who ship their farmed raised products in interstate commerce?

RESPONSE: There have been no federal prosecutions of aquaculturists who unknowingly shipped injurious species in shipments of otherwise legal products. The Service focuses its investigations on those who knowingly transport such species in interstate commerce.

Questions from The Honorable Rick Crawford

PANEL 1: William C. Woody – U.S. Fish and Wildlife Service

(1). While the U.S. Fish and Wildlife Service ("USFWS") claims it has never prosecuted accidental Lacey Act violations, much uncertainty exists in the aquaculture community as to whether the Service will take such action in the future. These concerns stem from the fact that State Fish and Wildlife Agencies and USFWS are listing injurious species at unprecedented rates, and USFWS is seeking a categorical exclusion from National

Environment Policy Act to list injurious species more quickly (78 FR 39307). Can you provide the Subcommittee with assurance that the Service will not prosecute accidental or inadvertent Lacey Act violations? If the Service pursues action against accidental violators of the Lacey Act through misdemeanor charges instead of criminal, in what manner will fees be assessed (i.e., per injurious organism or value thereof, or per shipment or value thereof)?

RESPONSE:

The U.S. Fish and Wildlife Service Office of Law Enforcement is responsible for enforcing Federal prohibitions on the importation and interstate transport of species listed as "injurious" in the Lacey Act (Title 18 U.S.C. 42). Service law enforcement officers also support State efforts to prevent the introduction of State-banned invasive species via interstate commerce or international trade under the section of the Lacey Act that addresses wildlife trafficking (Title 16 U.S.C. 3372). The two key provisions contained in the Lacey Act are commonly referred to by the U.S. Code title in which each is found, Title 16 and Title 18.

The Title 16 wildlife trafficking prohibitions have a burden of proof for the Government to show a "knowingly" standard for criminal violations and an "in the exercise of due care, should have known" standard for civil violations. If the Government cannot meet this standard of knowledge, then they are precluded from convicting an individual who accidentally or inadvertently committed a Title 16 offence.

The Title 18 importation or interstate shipment of injurious wildlife violation is a strict liability misdemeanor. The purpose of the law is to protect the health and welfare of humans, the interests of agriculture, horticulture or forestry, and the welfare and survival of wildlife resources from potential and actual negative impacts. When these cases are prosecuted, they are charged on a per shipment basis.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 02 2014

The Honorable Joe Manchin
Chairman
Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the November 20, 2013, hearing on S. 182, S. 339, S. 483, S. 771, S. 841, S. 1414, S. 1415 and S. 1479.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable John Barrasso, Ranking Member
Committee on Energy and Natural Resources

FROM SENATOR RON WYDEN

Steve Ellis, BLM

1. I would like to ask Mr. Ellis a question on the two Oregon bills I introduced - S. 1414 and S. 1415. Restoring these tribes' homelands so that they can exercise their sovereignty is very important to these tribes. And, it's very important to me. I appreciate that the Administration supports the goals of these bills. I understand that a land transfer like this is complicated and raises a number of policy issues. Can I get your commitment that the BLM will work with me so that we can move these bills forward?

The BLM supports the goals of the bills and the goal of putting lands into trust on behalf of tribes in order to protect sites of cultural significance and provide economic opportunities. The BLM has long enjoyed a strong relationship with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians. Our work with them has included consultation and coordination on a wide range of activities, such as restoration, recreation, environmental education, cultural and heritage resource management. We welcome the opportunity to continue our work with you on policy issues affecting access, utility and facility encumbrances as well as timber harvest so we can address concerns raised in our testimony while supporting the goals of the bills.

2. Also, in your written testimony, you say you have technical concerns with section 7 of each bill. Can you please expand on that?

Section 7 of S. 1414 and S. 1415 pertains to the reclassification of public domain forest lands as O&C lands. This section raises a number of concerns for the BLM that we would like to work with you to address. First, the 180-day time frame for completing a survey as described in Section 3 would be very difficult-if not impossible-for us to meet due to staffing and cost constraints so we would like to identify a different time frame. Additionally, we would like to work with you to modify the survey requirements so as to ensure that they are described in a way that is both efficient and practical. For example, in lieu of completing extensive field surveys, we recommend instead use of the existing Public Land Survey System Land Descriptions where possible.

Second, the bills direct the Secretary of Agriculture and the Secretary of the Interior to "identify any land owned by the Oregon and California Railroad." It is our understanding that you intend the bills to transfer or reclassify only Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands falling under the jurisdiction of the Department of the Interior. We would like to work with you on language clarifying this point.

Additionally, the bills direct the Department of the Interior to identify public domain lands to reclassify as O&C lands in order to ensure there is no net loss in the size of the O&C land base. The BLM is concerned that lands of approximately equal acreage, habitat condition, productivity, and land use allocation may be unavailable for

reclassification within the affected planning areas. The BLM would like to work with you on language that provides greater clarity on the lands to be reclassified and how they would be managed. Specifically, the BLM is concerned that reclassification would affect not only revenues to the Treasury but also the BLM's ability to meet present timber sale volume targets. Finally, the BLM would also like to work with you on two additional issues: language regarding the technical aspects of reclassifying land and language clarifying which environmental laws, policies, and plans would apply if the bills were enacted.

FROM SENATOR BARRASSO

1. S. 483, S. 776, and S. 841 would either designate wilderness or federal lands as a National Conservation Area. I am concerned we could be locking up lands that may be important for energy and mineral development.

Have these federal lands been assessed with respect to their energy or mineral development potential? Do you have any available reports to share with the committee?

The Department of the Interior defers to the Department of Agriculture on S. 776, the Columbine-Hondo Wilderness Act and S. 841, the Hermosa Creek Watershed Protection Act. The areas proposed for conservation designation under both of these bills are on National Forest System lands. Likewise the Department defers to the Department of Agriculture on National Forest System lands proposed for designation under S. 483, the Berryessa Snow Mountain National Conservation Area Act. Approximately 141,200 acres of the proposed 350,000 acre National Conservation Area is on lands managed by the BLM and approximately 28,650 acres on lands managed by the Bureau of Reclamation (BOR). The Department supports the bill as it applies to lands managed by the BLM and BOR.

The BLM does not have any official studies of this area. However, there are no mineral leases within the area proposed for designation and the potential for oil and gas and geothermal is generally considered low. There are two mining claims within the area on which there is no current activity. There had been active mining in parts of the area late in the 19th and early 20th centuries, but there has been no active mining for at least 30 years.

FROM SENATOR FLAKE

1. In your testimony, you stated, "It is the Administration's policy that NEPA be fully complied with to address all federal agency actions and decisions, including those necessary to implement congressional direction." Where is this policy stated (e.g., federal regulations, guidance, statute, internal policy documents)?

Response: The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." Federal agencies also follow implementing regulations and policies issued by the Council on Environmental Quality (CEQ). The Department also promulgated NEPA regulations (43 CFR Part 46) and issued Departmental policy (Departmental Manual 516, Chapter 11) that the BLM also follows to comply with NEPA. NEPA requirements, including the public process and the direction to engage Federal, State, and local agencies, lead to better, more collaborative decision-making.

2. Please provide a copy of the document that states that it is the Administration's policy that NEPA be complied with prior to enactment of a congressionally directed land exchange or other land conveyance.

Response: The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." The Department's NEPA regulations at 43 CFR 46.100(a) specify that a bureau proposed action is subject to NEPA if it would cause effects on the human environment and is subject to bureau control and responsibility.

3. Despite stating that it is Administration "policy," the Administration has not insisted on NEPA compliance prior to the enactment of any other congressionally directed land exchange or other land conveyance bill pending before this Committee. For example, the Administration's testimony on S.159, S.1414, S.1415, S.609, and HR 507, does not mention pre-conveyance or pre-exchange NEPA. Why has the Administration declined to require the same-type of NEPA compliance in other bills that it now insists is a "principal concern" with regard to S.339?

Response: The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." BLM and DOI will work to comply with NEPA requirements for any legislation enacted by Congress.

4. What are the criteria the Administration uses to determine whether to require NEPA compliance prior to a congressionally directed land exchange or other land conveyance?

Response: The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." Federal agencies comply with statutory direction they receive

from Congress; this often entails compliance with multiple statutes. The applicability of NEPA requirements is dictated by the terms of the land exchange or conveyance statute and NEPA itself.

5. Is it the Administration's position that S.159 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Response: In testimony delivered on April 25, 2013, the Administration expressed concerns that the timeline provided in S. 159, the Lyon County Economic Development and Conservation Act, would not allow sufficient time to complete environmental review and public consultation required under the National Environmental Policy Act of 1969 (NEPA) prior to the exchange. NEPA requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." BLM and DOI comply with NEPA requirements and would like to work with Congress to meet the goals of the legislation while ensuring appropriate environmental review occurs.

6. Is it the Administration's position that S.1414 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Response: The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." If S. 1414 was enacted, the BLM would comply with the requirements of NEPA.

7. Is it the Administration's position that S.1415 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Response: The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." If S. 1415 was enacted, the BLM would comply with the requirements of NEPA.

8. Is it the Administration's position that S.609 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Response: The Administration has expressed its support for S. 609, the San Juan County Federal Land Conveyance Act. If S. 609 was enacted, the BLM would comply with the requirements of NEPA.

9. Is it the Administration's position that HR 507 needs to be amended to include a pre-exchange NEPA provision prior to congressional enactment?

Response: The Administration raised environmental review concerns with the proposed land exchange when testifying on an earlier version of H.R. 507, the Pascua Yaqui Tribe

Trust Land Act, in the 112th Congress. In its testimony on April 17, 2012, on the earlier version of the bill (H.R. 4222), the Department expressed concern that the legislation as written did not ensure public involvement and participation under the National Environmental Policy Act of 1969 (NEPA). NEPA requires that Federal agencies review "major Federal actions significantly affecting the quality of the human environment." If S. 507 was enacted, the BLM would comply with the requirements of NEPA.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 02 2014

The Honorable Mary Landrieu
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Madam Chair:

Enclosed are responses prepared by the Bureau of Land Management to the questions for the record submitted following the February 6, 2014, hearing on S. 1784.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Lisa Murkowski, Ranking Member
Committee on Energy and Natural Resources

QUESTIONS FOR THE RECORD, STEVE ELLIS
SENATE ENERGY & NATURAL RESOURCES COMMITTEE HEARING
FEBRUARY 6, 2014

FROM SENATOR MURKOWSKI

Mr. Ellis, The dominant-use mandate in the O&C Act clearly provides that timberlands are to be managed for "permanent forest production" under the principle of sustained yield. I understand that the BLM is under court order to comply with the O&C Act and sell more timber in the Medford and Roseburg Districts of Southern Oregon.

Question 1a.

What is the agency doing to comply with that court order?

The BLM is considering ways in which it can offer for sale timber volume in the Medford and Roseburg Districts in compliance with the court order. Because this matter is still in litigation, however, the BLM is unable to comment on specifics.

Question 1b.

How do the timber harvest volumes required under the court order for the Medford and Roseburg Districts compare to those expected under S. 1784 according to analysis performed by Dr. Johnson?

The court order requires the BLM Medford and Roseburg Districts to offer for sale a volume of timber that is at least 80% of the respective District's declared Annual Sale Quantity, an amount that is based on the 1995 RMP harvest land base within district administrative boundaries. .

Dr. Johnson's approach provided harvest volume calculations for moist and dry forest types across all the O&C lands in western Oregon. The moist and dry forest types do not coincide with Medford and Roseburg district boundaries. The analyses performed by Dr. Johnson to date do allocate the expected volume under S.1784 on a BLM district–by-district basis.

Mr. Ellis, in November of last year, the BLM provided timber harvest volume estimates for S. 1784, in a letter to Senator Wyden. This letter states, "(B)ased on the parameters in the proposed legislation, Professor Johnson, with assistance from BLM analysts, estimates the average annual timber harvest volume would range from 300 and 350 million board feet over the next two decades."

Question 2a.

Did the BLM do any analysis that would indicate this level of harvest is sustainable beyond 20 years? If so, what level of harvest would be sustainable over the long term (beyond 20 years) under the approach outlined in S. 1784?

In working with Dr. Johnson, we were tasked with analyzing only the first two decades. The BLM has not developed a sustained yield harvest calculation beyond 20 years.

Question 2b.

The BLM's letter notes that the harvest volume estimates were Dr. Johnson's with assistance from BLM analysts. How much confidence does BLM have in these estimates?

If timber harvest could be implemented according to the assumptions used to develop the harvest calculations, the BLM has high confidence that 300-350 mmbf of timber would be available for 20 years.

However, in written testimony, the BLM identified a number of concerns regarding implementation of the bill, including concerns which make it difficult to predict the feasibility of BLM achieving the predicted volume estimates under S. 1784. In some cases, it appears the legislative language may not be consistent with the assumptions used for the harvest calculations. For example, it is uncertain to what extent spotted owl sites, designated critical habitat (for spotted owls and marbled murrelets), and drinking water protection areas would affect the harvest volume estimates.

In Section 117 of the bill titled "Land Ownership Consolidation" the BLM is directed to consolidate the checkerboard pattern of O&C land using sales or land exchanges. Before exchanging any land, however, the Secretary must determine it is in the public interest to do so.

Question 3a.

The bill, as drafted, does not specify the process or provide criteria to the BLM to determine whether the land exchanges are in the public interest. What process and/or what set of criteria does the BLM intend to use to determine whether land exchanges authorized under this legislation are in the public interest?

As required by the Federal Land Policy and Management Act (FLPMA, Sec. 206), the BLM considers many values and objectives when determining whether a particular land exchange action is "in the public interest." These values and objectives include giving full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple use values; and fulfillment of public needs. The BLM would also evaluate proposed land exchanges under the National Environmental Policy Act (NEPA), including public scoping and developing an Environmental Assessment or Environmental Impact Statement prior to a decision. Consistent with FLPMA, prior to making a decision on a proposed land exchange, the BLM also must consider whether

the exchange is consistent with the governing land use plan(s), determine the value of the properties to be exchanged, and determine whether there are any title restrictions or valid existing rights that could impact the exchange. Through the NEPA process, the BLM further examines any resource impacts of activities (such as grazing, minerals, recreation, and constructed assets) associated with the exchange; and in compliance with the National Historic Preservation Act and its tribal consultation obligations, the BLM analyzes cultural resource and Native American tribal and religious concerns.

Question 3b.

Under your public interest determination process does the BLM envision instances where land exchanges would be found to be in the public interest that would convey timberlands out of federal ownership for development by private or state interests? Why or why not?

As part of the public interest determination process, the BLM would evaluate a wide range of issues. Whether a land exchange conveying timberlands out of federal ownership for development would be in the public interest would depend upon issues identified during scoping and the values and objectives, previously mentioned in response to Question 3a, considered during the determination process.

It has been stated that S. 1784 will double harvest volumes on BLM lands over the next 20 years to approximately 300-350 million board feet by employing ecological forestry principles.

Question 4.

Please provide an estimate of the amount of funding that would be required under S. 1784 to reach those harvest level volumes.

S. 1784 directs many procedural requirements and analyses to occur within 18 months of enactment. In the short term, the BLM would expect to incur increased costs, including additional staff and/or contracts, to meet these front-loaded requirements. Because S. 1784 includes new processes that have not been completely analyzed for implementation, the BLM is unable to predict an amount, if any, of unit cost savings, or other associated direct and indirect costs.

FROM SENATOR BARRASSO

In materials released by the BLM, Carolina Hooper, the BLM analyst who worked with Dr. Johnson on his harvest volume estimates, noted that their calculations only excluded the "highest quality spotted owl critical habitat" from harvest projections.

Question 1a.

How was this "highest quality" habitat selected?

In response to a request made by Senator Wyden, the BLM provided extensive technical assistance to his staff as they worked to develop the bill and the associated maps. The steps described below were taken by BLM analysts in response to requests made by Senator Wyden's staff during the technical assistance process.

Initially, the highest quality habitat was selected using a map of Relative Habitat Suitability (RHS) scores for spotted owl habitat within designated critical habitat. RHS scores give an indication of the likelihood that owls occur or would occur in a given area. The higher the score, the higher the likelihood that owls will occupy the area. The highest quality habitat was defined by the area comprising the top 30% of RHS scores within designated owl critical habitat.

At that point in the process the following steps were taken, based on guidance from Senator Wyden's staff, to determine how Northern Spotted Owl Critical Habitat would be evaluated in the formulation of the O&C Land Grant Act of 2013:

- Two sets of geospatial data, one representing Northern Spotted Owl Critical Habitat units and another representing the Best 30 percent (Highest Quality) Northern Spotted Owl Habitat, was obtained from U.S. Fish & Wildlife Service.

- The Bureau of Land Management's Oregon and California Railroad and Coos Bay Wagon Road lands were evaluated together as (O&C lands).

- The Highest Quality owl habitat was not evaluated independently. The Highest Quality Northern Spotted Owl Habitat was combined with areas of existing Wilderness, designated Wild and Scenic River corridors, moist forest stands of greater than or equal to 120 years of age, and additional BLM national designations such as national monuments.

- These combined areas were evaluated by each public land survey, township, range, and section division.

- Where 30 percent or more of O&C lands for a section were within the combined area, the lands were categorized as "Conservation Emphasis." These Conservation Emphasis areas were excluded from timber harvest calculations.

- Based on guidance from Senator Wyden's staff, a range of additional areas were added to the "Conservation Emphasis" category. None of these additions were based on Northern Spotted Owl Critical Habitat, but some overlap the habitat areas.

Question 1b.

How much spotted owl critical habitat is located on the O&C lands and how much of this is considered "highest quality"?

The Critical Habitat and High Quality Critical Habitat acreage information is summarized below:

Total Critical Habitat on O&C Lands	1,195,580
Total High Quality Critical Habitat on O&C Lands	615,767 (52%)

Total Critical Habitat on O&C Lands	1,195,580
Total Critical Habitat in Conservation Emphasis Areas	663,237 (55%)
Total Critical Habitat in Forestry Emphasis Areas	532,343 (45%)

Total High Quality Critical Habitat on O&C Lands	615,767
Total High Quality Critical Habitat in Conservation Emphasis Area	547,472 (89%)
Total High Quality Critical Habitat in Forestry Emphasis Area	68,295 (11%)

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 30 2014

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department of the Interior to questions submitted following the Subcommittee's March 5, 2014, legislative hearing on *"National Fish Hatchery System: Strategic Hatchery and Workforce Planning Report."*

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Gregorio Kilili Camacho Sablan
Ranking Member

Committee on Natural Resources
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Legislative Hearing
1324 Longworth House Office Building
March 5, 2014
10:00 a.m.

U. S. Fish and Wildlife Service:

(1). What were the original reasons that the National Fish Hatchery System was established in 1871?

The United States Commission of Fish and Fisheries (more commonly known as the U.S. Fish Commission) was authorized by a joint Congressional resolution on February 9, 1871. President Ulysses S Grant then established the U.S. Fish Commission and appointed Spencer Fullerton Baird as the first Commissioner. The U.S. Fish Commission was established to investigate the causes of declines in stocks of commercial fish in U.S. coastal and inland waters, to provide recommendations to Congress and the States for reversing these declines, and to oversee implementation of restoration actions. This includes the propagation efforts of the National Fish Hatchery System (NFHS). Numerous laws enacted over the years have directed the Service to use the NFHS to carry out actions such as providing food fish, farm pond stocking, mitigation, and restoration and recovery of imperiled species.

(2). Isn't it true that one of the fundamental goals of the hatchery system was to compensate or mitigate for the loss of fish and recreational opportunities because of federal water projects?

One of the fundamental responsibilities of the NFHS over the years has been to seek and provide for mitigation of fishery resources that were impaired due to Federal water-related development. Mitigation for Federal water projects is still an important goal of the NFHS, but not at the expense of higher priorities such as the restoration or recovery of threatened and endangered species, or fulfilling Tribal Trust responsibilities. With full reimbursement, the NFHS will continue its mitigation programs.

(3). Since the vast majority of the federal water projects are still in place, how has the statutory responsibility for this mitigation been removed?

Over the past 40 years, our many partners, Congress, the Office of Management and Budget (OMB), and the Department of the Interior (DOI), have directed the Service to secure mitigation reimbursement from the entities responsible for the respective water development project. Over the past decade, Congress, OMB, DOI, and our partners have asked the Service to intensify our efforts to obtain reimbursement for fish mitigation production from these agencies. The Service is making every effort to comply with that direction and to shift the funding for this mitigation work to the responsible party. We understand that the fish supplied by our hatcheries provide important economic

opportunities to the states and the recreational community in general, and we support the continuation of mitigation work on a reimbursable basis.

(4). When did the primary focus of the hatchery system change from stocking and mitigation of federal water projects to the recovery and restoration of federally listed species?

Since the inception of the Endangered Species Act in 1973, there has been an increasing need to attempt to prevent the loss of native species through captive rearing and subsequent stocking, as identified in approved recovery and restoration plans.

Although Congress provided the Service with $46,528,000 to operate the NFHS in the recently enacted FY 2014 Omnibus, a significant increase compared to FY 2013, funding is still not sufficient to continue all existing propagation programs at current levels. The Service is using the *National Fish Hatchery System Strategic Hatchery and Workforce Planning Report* (Report) to engage stakeholders (Congress, state fish and wildlife agencies, Tribes, and other partners) to discuss the Report and its findings, as well as our budget challenges. We're seeking input on how we should operate the NFHS more efficiently and within available resources into the future. Working together, we would like to chart a course forward for the NFHS that is financially sustainable, addresses today's most pressing conservation challenges, and, in collaboration with our partners and stakeholders, continues to serve the public interest.

(5). Of the 140 million fish that are propagated by the hatchery system each year, how many are used for the recovery and restoration of a federally listed species?

In 2013, nearly 80 million eggs were transferred to federal, state, and tribal hatcheries by the NFHS, and approximately 128 million fish were released into the wild. Of those fish released, 13.3 million were classified as threatened or endangered.

(6). At the Craig Brook National Fish Hatchery in Maine, how many Atlantic salmon, which is a listed species, are propagated and released each year? What is the cost of this program?

Craig Brook National Fish Hatchery (NFH) is entirely focused on recovery and preventing extinction of Atlantic salmon. As part of the recovery program for the Penobscot River, Craig Brook NFH receives sea-run adult Atlantic salmon trapped from the Penobscot River for use as broodstock. These adults are spawned in the fall of every year and produce approximately 3 million eggs. Eggs are then transferred to Green Lake National Fish Hatchery for Penobscot River smolt production. The rest of the eggs are raised at Craig Brook NFH and released as fry.

In addition, Craig Brook NFH supports the recovery of six Atlantic salmon populations within the Gulf of Maine Distinct Population Segment (DPS) that were listed as an endangered species in 2000. Juvenile Atlantic salmon are captured from the Dennys, East Machias, Machias, Narraguagus, Pleasant, and Sheepscot rivers annually and

brought to Craig Brook NFH for captive rearing. These juveniles are reared at Craig Brook NFH to sexual maturity and spawned to produce fry that are stocked back into the same river where the parents were captured.

An important component of both programs at Craig Brook NFH is the genetic screening of broodstock. All broodstock, both Penobscot sea-run adults and DPS juveniles, are genetically characterized through DNA analysis to ensure that no undesirable genes are inadvertently introduced into the broodstock population.

Total cost for the Craig Brook NFH program is $958,607, which includes operations and salaries for Craig Brook NFH and the genetic and fish health costs associated with running the program. That does not include cost for smolt production at Green Lake NFH.

(7). How many of these fish are counted toward the recovery goals of this species? How many survive to adulthood after their release?

Attached is a summary of all adult returns from 1970 until 2013 and it includes a breakdown of natural reared and hatchery origin fish.

The recovery goals are still being developed and a revised Atlantic salmon recovery plan is expected to be released soon for the entire DPS.

(8). During the past five years, why has the Obama Administration requested less money for the operation and maintenance of the hatchery system?

At the direction of Congress and several Administrations, the Service has asked that responsible federal agencies fund their share of the expenses of mitigation hatcheries. The Service has been successful in engaging these agencies. In the face of declining budgets, the Service reduced the amount requested for hatcheries, relying on the reimbursements as offsets. For FY 2015, the Administration has requested $48,617,000 for National Fish Hatchery Operations, approximately $2 million more than Congress appropriated in FY 2014.

(9). Since the Congress has appropriated more money than the Obama Administration requested for the operation, maintenance and equipment of the hatchery system over the past five years, why is it not fair to conclude that the Congress places a higher priority on the system, than the Fish and Wildlife Service?

The Service appreciates the support for the National Fish Hatchery System provided by Congress. In requesting funding to operate the National Fish Hatchery System, the Service is complying with Congressional direction to seek reimbursement for fish production operations to mitigate for the impacts associated with Federal water development projects. Over the past several years, the Service has successfully negotiated reimbursement or developed agreements with the U.S. Army Corps of Engineers, the Tennessee Valley Authority, and others, to help cover the costs associated

with mitigation fish production. The Service has also conducted a review of our 70 propagation hatcheries and is using that report as a basis for discussions with stakeholders on how best to operate the system in a more sustainable manner while supporting the highest priority fish and aquatic conservation programs. Implementation of the report will be phased and carried out in consultation with Congress, states, tribes, and other partners.

(10). According to the Fish and Wildlife Service's Workforce Planning Report, there are 291 propagation programs within the hatchery system. Of these, 171 are for ESA recovery and restoration efforts, 56 are for tribal interests, and 70 are for native and non-native fish mitigation. By my count, the last category represents less than 25 percent of the programs and less than 10 percent of the money being spent. Are my figures correct?

When the team was evaluating each and every propagation program individually, they classified propagation programs that covered more than one category into the highest priority category. For example, if a propagation program is both restoration and mitigation, it is classified as restoration. Based on our counts, there are 30 propagation programs that are classified as native and non-native mitigation. Fewer than 25 percent of the propagation programs fall into the native and non-native species categories, and approximately 10 percent of the FY 2012 hatchery operations and annual maintenance funding supported native and non-native species programs.

(11). Why would a five percent increase in funding for the operation and maintenance of the hatchery system result in the termination of programs and personnel in your Southeast Region?

The *National Fish Hatchery System: Strategic Hatchery and Workforce Planning Report* (Report) is not a decision document. It offers management options and recommendations under different funding scenarios. As stated in the Report under the five percent increase scenario, "The Review Team chose to allocate the additional funding to the regions based on existing allocation formulas, such that each region with propagation facilities received a portion of the funding." The Southeast Region was already struggling with a $2.1 million shortfall in FY 2012 when the Report was developed. If a five percent increase was distributed based on existing allocation formulas, the Southeast Region would still be facing a deficit under that scenario in FY 2012.

(12). What is the average per unit cost to operate a national fish hatchery?

As shown in Appendix B of the Report, hatcheries vary greatly in size, staffing levels and complexity. The average cost by category is as follows:

- $3,561,303 for a large multi-station complex
- $906,271 for a complex of at least 2 facilities
- $848,500 for a large stand alone hatchery
- $532,182 for a small stand alone hatchery

The report can be found at:
http://www.fws.gov/home/feature/2013/pdf/NFHSReviewCoverPageandReport.pdf

The appendices can be found at:
http://www.fws.gov/home/feature/2013/pdf/NFHSReportAppendices.pdf

(13). What is the current operations backlog within the National Fish Hatchery System?

To answer this question, the Service queried unfunded projects that were entered into our Fisheries Operational Needs database between 2008 and 2012. On this basis alone, we identified 135 outstanding projects totaling $14.5 million at our National Fish Hatcheries, Fish Technology Centers and Fish Health Centers.

(14). What is the current maintenance backlog within the National Fish Hatchery System?

Our deferred maintenance backlog numbers are calculated at the end of every fiscal year (FY). At the end of FY 2013, the National Fish Hatchery System (NFHS) had 4,602 assets valued at $2,328,078,720. The Deferred Maintenance backlog for the NFHS totaled $167,364,849.

(15). In the mid-1990's, the Clinton Administration decided it wanted to get out of the hatchery business and the Fish and Wildlife Service supported legislative efforts to transfer, at no cost, a number of federal fish hatcheries to various states and local governmental entities. Would the Service support the transfer of some, or all, of the so-called mitigation hatcheries to the various states?

The Service has not entered into discussions regarding hatchery transfers. However, if a state were to contact us, we may be willing to discuss a transfer depending on the hatchery.

(16). How much of the work being performed within the federal fish hatchery system is the result of unpaid volunteers? How many hours are being volunteered, how many individuals volunteer their time in 2013 and what is the financial value of their efforts?

Whether they want to give back to communities, want to be good stewards of the land, set examples for future generations, or want to share their wealth of knowledge, volunteers are critical to the operation of national fish hatcheries across the country. In FY 2013, National Fish Hatchery System facilities recorded 98,265 hours by adult volunteers valued at $2,215,876. The National Fish Hatchery System also recorded 12,618 hours by youth volunteers.

(17). When will the Service make a decision on the future of its National Broodstock Program? What is the annual cost of keeping this program?

The Service has deferred a decision on the National Broodstock Program until we can conduct a similar analysis of all egg requests made of our broodstock facilities. We have not established a timeframe for our decision. The total amount of Service funding that was spent at Ennis, Erwin, and White Sulphur Springs National Fish Hatcheries specifically for the National Broodstock Program in FY 2012 was $928,577. Reimbursement from the U.S. Army Corps of Engineers in FY 2012 for the three hatcheries totaled $548,841. These costs do not include associated fish health costs.

(18). Is it fair to say that the Service does not intend to terminate the broodstock programs at the Ennis, Erwin and White Sulphur Springs National Fish Hatcheries which are producing millions of rainbow trout fish eggs which the Service indicates can no longer be obtained from the wild? What is the cost of these three programs? What is the value of this work?

The Service does not intend to terminate broodstock programs at Ennis, Erwin and White Sulphur Springs National Fish Hatcheries in the near-term. We have deferred a decision on the National Broodstock Program until we can conduct a similar analysis of all egg requests made of our broodstock facilities. The total amount of Service funding that was spent at the three hatcheries specifically for the National Broodstock Program in FY 2012 was $928,577. Reimbursement from the U.S. Army Corps of Engineers in FY 2012 for the three hatcheries totaled $548,841. These costs do not include associated fish health costs.

(19). Why did the Fish and Wildlife Service terminate the rainbow trout production program at the Willow Beach National Fish Hatchery in Arizona? Hasn't this hatchery been propagating and releasing these fish for over 50 years?

The Service terminated trout production at Willow Beach NFH in fall 2013 due to a failure in the water supply line. The river intake system for trout production at Willow Beach NFH is a dual pipeline combination, and has been compromised by structural and biofouling issues. Half of its flow capacity was eliminated when one pipeline collapsed. The intake to the remaining half was clogged with vegetation this past summer to the point where flows were stopped, resulting in loss of trout. The intake was dewatered this fall as water levels were drawn down in Lake Mohave, causing mortalities in half the hatchery raceways. Each failure of the intake resulted in the loss of the fish that were dependent upon the water flowing to the raceways, culminating in the last incident that killed thousands of trout. The remaining trout were only saved because hatchery staff worked well into the night to immediately release them to the river.

(20). Why weren't locally elected officials informed prior to the termination of this program?

This was not a planned termination. Local officials were not informed in advance because it was an emergency and hatchery staff had to respond in an urgent manner to save as many fish as possible.

Since the collapse of the deeper water supply line, Willow Beach NFH has had to rely on the shallower water line to maintain trout production. Fish were lost in the summer of 2013 when the remaining water line became clogged with vegetation. When the Lake Mohave water levels were drawn down last fall, there was no water available to keep the fish alive. Hatchery staff saved as many fish as they could by releasing them into the river.

(21). It is my understanding that the Service has told the affected communities that they stopped rainbow trout production because of a broken hatchery pipe. What is the cost to replace this pipe and how long would it take to get this production back on line?

The Service requested contractor bids in 2012 for repair of the existing pipeline. Even without a system to remove quagga mussels from the river water, contractor bids ranged from $1.37 to $2.43 million to repair the existing pipeline.

The Service developed an engineering estimate in 2011 to construct a system to deliver clean water from the river in sufficient quantities to rear both the endangered species and the trout. That estimate totaled $8.46 million, with a significant increase in operational costs to then maintain the new delivery and treatment systems.

The Service lacks sufficient funding in both our Construction and Hatchery Deferred Maintenance accounts to repair or replace the existing pipeline or to construct a new system.

(22). How many other stocking programs throughout the United States have been terminated in the last twelve months? Please provide a complete list of those propagation programs and the reasons they are no longer producing fish.

In Region 3, the Service discontinued two propagation programs at Neosho NFH (MO): (1) rainbow trout that were surplus to our mitigation needs; and (2) rearing of walleye fry obtained from the Missouri Department of Conservation, an in-kind exchange program that last produced fish in 2008

In Region 4, the Service discontinued several lower priority propagation programs at the following hatcheries: cobia at Bears Bluff NFH (SC); largemouth bass and bluegill at Edenton NFH (NC); smallmouth bass and walleye at Mammoth Spring NFH (AR); largemouth bass at Natchitoches NFH (LA); largemouth bass and bluegill at Orangeburg NFH (SC); and largemouth bass, bluegill, redear sunfish, and channel catfish at Private John Allen NFH (MS).

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 22 2014

The Honorable Tom McClintock
Chairman
Subcommittee on Water and Power
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Bureau of Reclamation to the questions for the record submitted following the March 25, 2014, oversight hearing entitled *Examining the Proposed Fiscal Year 2015 Spending, Priorities and the Missions of the Bureau of Reclamation, the Four Power Marketing Administrations and the U.S. Geological Survey's Water Program.*

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Grace F. Napolitano
Ranking Minority Member

Committee on Natural Resources
Subcommittee on Water and Power
Budget Oversight Hearing
1324 Longworth House Office Building
March 25, 2014

Questions for the Bureau of Reclamation (Acting Commissioner Lowell Pimley) from Rep. Jim Costa

San Joaquin River Restoration Program

When the Restoration Program was developed, it was agreed there would be no involuntary impacts on third parties. When California was going through its last drought, Regional Director Donald Glaser told the Exchange Contractors that Reclamation would honor the Exchange Contract by releasing water from Friant ahead of making water available to the Restoration Program. Specifically, Director Glaser stated: "...[i]f. A situation were to occur where settlement flows conflicted with Reclamation making necessary deliveries under the contract with the Exchange Contractors, which as we discussed below is highly unlikely, Reclamation would make water available to meet the contractual requirements, consistent with the Contract." Then on May 7, 2012, Reclamation filed its application to the State Water Board to divert and release water for the Restoration Program and represented to the Water Board that there would be no harm to the Exchange Contractors' water supply from the Restoration Program because, "Reclamation will ensure that sufficient Millerton Reservoir storage is maintained, and that available San Joaquin River channel capacity is not impeded by the presence of Interim or Restoration flows, in order to make releases of available storage from Millerton Reservoir in lieu of deliveries from the Delta Mendota Canal if such releases become necessary under the terms and conditions of the Exchange Contract and various water right and settlement adjustment contracts." In your March 18, 2014 letter that you sent to Congressman Jim Costa, which was in response to his inquiry submitted to you on January 31, 2014, the second paragraph of your letter indicated that so long as unimpaired flows to the San Joaquin River remained below 400,000 acre-feet that restoration flows will cease until March 1, 2015. However, the following sentence indicated that should the unimpaired flows to the San Joaquin River improved beyond 400,000 acre-feet that restoration program flows will resume consistent with the Settlement.

1) In a relatively recent meeting in California, Reclamation specifically conveyed to the Exchange Contractors that it will not release ANY restoration program flows to the San Joaquin River in 2014 until the Exchange Contractors receive their full contractual requirement from Reclamation. Is reclamation now taking the position that even though the Exchange Contractors are not receiving their full contractual entitlement from the Bureau of reclamation this year from the Delta and San Luis Reservoir, and if unimpaired flows increase to over 400,000 acre-feet, that they will then release restoration program flows down the San Joaquin River?

> *Response: Reclamation's position has not changed. In our March 18, 2014 letter to you, we identified only the requirements in the Stipulation of Settlement in NRDC, et al., v. Rodgers, et al., that would trigger releases under the Restoration Program. However, there are a variety of factors that Reclamation will consider before beginning releases for*

the Restoration Program. As this year is an unprecedented condition and many of these factors are in flux, we did not attempt to articulate all of these factors in the March 18, 2014, letter to you. However, one of the factors that we will consider before resuming releases for the Restoration Program is our ability to meet our obligations under the Exchange Contract or not conflict with the Exchange Contractors receiving water under their water rights and agreements that pre-date Reclamation's rights at Friant Dam. Our commitment to this is demonstrated by the fact that we have not resumed releases for the Restoration Program even though the Program has been in a Critical High Year since early April, which the Settlement calls for over 70,000 acre-feet of releases in this year type.

2) Do you agree that Reclamation must and will deliver San Joaquin River water to the Exchange Contractors ahead of the Restoration Program if water is not available from the Delta, San Luis Reservoir or other sources in order to avoid harm to the Exchange Contractors consistent with the statements made by Reclamation in the 2009 letter and in the 2012 application to the State Water Board?

Response: Reclamation's position has not changed from our 2009 letter and our 2012 application to the State Water Resources Control Board. Consistent with Public Law 111-11, Section 10004(j), nothing in the San Joaquin River Restoration Settlement Act modifies or amends the rights and obligations under the Purchase Contract between Miller and Lux and the United States and the Second Amended Exchange Contract between the United States and the Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company.

The Administration's 2015 budget request includes a total of $52.1 million in federal funds for implementation of the San Joaquin River Restoration Program, of which $34 million are appropriated dollars. The 2014 Annual Work Plan estimates the State of California budgeting $22.8 million for the Settlement Program in FY 15, bringing the total federal-state FY 15 budget for implementation to $ 74.9 million. That is significantly below Bureau of Reclamation's 2012 framework for implementation of the Settlement, which assumed a total FY 15 federal-state budget of $133 million. FY 14 funding levels were also significantly below those called for in the Implementation plan, and all of the major construction projects are far behind schedule and virtually impossible to get back on track with the original Settlement dates.

Regardless of how one views the merits of the Settlement, it's obviously a program whose funding projections and timetable are in need of serious adjustment. Unrealistic implementation and funding schedules do not demonstrate program achievements and reduce program credibility. I understand that the Bureau is preparing a revised implementation plan for the Settlement, which may be released soon.

3) Will that revised implementation plan be based on realistic timelines and funding projections that can provide a foundation for a thoughtful a reassessment of the Settlement?

Response: In June 2012, Reclamation completed the Working Draft Framework for Implementation for the Restoration Program. The June 2012 Framework provided an

updated schedule and budget for the Program's core projects assuming funding would be available when the individual projects were ready for implementation. The June 2012 Framework is available on the Program's website here: http://restoresjr.net/program_library/02-Program_Docs/20120619_SJRRP_Framework_for_ImplDRAFT.pdf.

Reclamation is currently working with the parties to the Settlement to revise the Framework to reflect a realistic timeline and an anticipated rate of future appropriations for the Program. This update is in progress and is anticipated to be completed this year. This revised Framework will address how long it will take to complete the needed channel improvements, other restoration activities, and water management actions at the current level of appropriations and an anticipated rate of future appropriations.

Friant-Kern Canal Cooperative Agreement

4) What is the status of the cooperative agreement between Reclamation and Friant Water Authority to allow it, rather than USBOR, to undertake the project to restore the capacity of the Friant-Kern Canal?

Response: Reclamation is working to award a cooperative agreement to the Friant Water Authority to complete certain design activities as part of the Friant-Kern Canal Capacity Restoration Project. We expect to award this agreement this fiscal year. Reclamation is also working to award a separate cooperative agreement to the Friant Water Authority to complete the construction of the Friant-Kern Canal Capacity Restoration Project. We expect this second agreement to be awarded in early Fiscal Year 2015.

5) Where is the contract now and when is it expected to be completed and signed?

Response: See response above. The cooperative agreement to complete certain design activities is expected to be awarded this fiscal year. The cooperative agreement to complete the construction is expected to be awarded in early Fiscal Year 2015.

CVPIA

1. What priority has the Bureau of Reclamation put on completion of the environmental restoration activities outlined in Title 34 of Public Law 102-575, known as the Central Valley Project Improvement Act, so that Restoration Fund assessments can be reduced as envisioned in Section 3407(d)(2)(A)?

Response: Reclamation collects the charges provided for in section 3407 and expends the majority of the revenues on the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 that support ongoing annual activities and would provide for reduced collections upon completion. Additional expenditures of the Restoration Fund include: 1) administering the Restoration Fund and the associated planning and reporting; and 2) section 3408(h), land retirement, which will phase out and no longer require funding in 2015. Reclamation made use of Water and Related Resources Account and

American Reinvestment and Recovery Act funds to complete projects when available. Activities are developed each year in an Annual Work Plan available for public comment.

2. Section 3407(b) of the Central Valley Project Improvement Act provides that appropriations of up to $50,000,000 (October 1992 dollars) are to be authorized annually, however each year the Appropriations Bill has not requested this full funding. Has the Bureau of Reclamation requested a change in the Appropriations bill to ensure the maximum amount possible is appropriated this year so the water and power contractors of the Central Valley Project aren't paying more than their proportional share?

   Response: Section 3407(c)(2) of the CVPIA directs the secretary to impose charges to yield up to $50,000,000 per year, in 1992 dollars, and section 3407(d)(2) limits collections from water and power to $30,000,000 per year (in 1992 dollars), on a 3 year rolling average basis, and with a per acre-foot limitation on the amount that can be charged water. The Act anticipated revenues from a range of sources, of which, only the collections from Central Valley Project water and power contractors have materialized in substantial amounts. Reclamation has historically requested the amount required to achieve $30,000,000 (in 1992 dollars) on a three year rolling average basis. Reclamation has not requested a change in the appropriations language to achieve the $50,000,000 (in 1992 dollars) through other means.

3. Central Valley Project power customers have paid up to a $15 per Megawatt-hour adder for the CVPIA Restoration Fund since 2005, including Redding Electric Utility customers in my district that pay over $2 million per year. How do you plan to ensure that Central Valley Project power remains financially viable, specifically in a drought year such as this where power customers could expect lower than average electricity generated but a higher than average power cost per megawatt-hour due to the fixed fee nature of the current contracts?

   Response: Reclamation intends to work with water, power, fish, wildlife, and environmental stakeholders to develop a finance plan for activities under the CVPIA that establishes collections into the Restoration Fund, expenditures on CVPIA activities, and anticipated accomplishments. The Mid-Pacific Regional Director has met with power stakeholders and directed staff to work with the power stakeholders. Reclamation has scheduled a meeting with power stakeholders to establish the specific milestones in developing the plan, and begun initial outreach to the other stakeholder groups for participation.

4. Last year the Trinity River Restoration Program released additional water in the fall above and beyond what was authorized in the Program's Record of Decision, despite questions raised by myself and many of my colleagues that sit on this committee regarding the true benefit of this action as well as how you plan to make up for the unfulfilled water supply deliveries and power generation to CVP contractors. Although I understand you are limited in your ability to discuss this matter given the existing litigation, what are Reclamation's plans to ensure a long-term approach?

Response: The Bureau of Reclamation, acting under different authority than the Restoration Program's Record of Decision and the Central Valley Project Improvement Act (CVPIA), released approximately 17,500 acre feet of water from Trinity Reservoir to improve environmental conditions in the lower Klamath River in late summer 2013. This action was designed to benefit the near-record return of fall-run Chinook salmon from any deadly disease outbreak, as occurred in 2002.

There is no evidence that any water supply allocations have been affected by this action to date. Power generation available to CVP contractors varies due to a number of reasons, and there may be foregone power generation due to the Klamath River flow augmentation action. Reclamation continues to research methods and authorities for assessing any effects of this action in future years in terms of water supply and power generation, and seeks to identify and implement mitigation opportunities, as appropriate. Reclamation continues to develop a long-term plan for implementing lower Klamath River flow augmentation in those years when it is needed.

CVP Operations

California is entering its third dry year in a row. In fact, 2014 is the second-driest year in history. We're in an extreme drought, a natural phenomenon over which we have no control. We can't make it rain or snow to suit our needs, and so not all of our needs will be met this year. That's just a fact of nature.

We are also experiencing a water shortage in California that is not a natural phenomenon. By shortage I mean the water that is available during this drought is not being used to meet needs that could be met. We do have control over how that water is managed. Your agency, in particular, has control over how we manage what little water we have this year. In my view, that resource is being mismanaged by the imposition of regulatory requirements that benefit neither the environment nor the farms and cities of California. We are wasting vast amounts of water for no reason, or at least no reason that can be justified or explained in a way that meets the standards of law or of common sense.

Let me be clear. I understand that you have a duty to carry out the law, in this case the Endangered Species Act. And while I believe that law is in need of reform, we're clearly not going to do that today. And I acknowledge that federal and state fishery agencies charged with carrying out the ESA have worked hard to allow some additional water to be pumped from California's delta to farms and communities they serve. I'm certainly not suggesting that we can simply ignore the law and abandon the protected species in the delta.

What I am saying is that federal agencies are being inflexible in applying the ESA when the law, even with its flaws, gives you the flexibility to meet human needs AND to protect the Delta's fishery. The hard, irrefutable fact being glossed over is that only a tiny percent of salmon and smelt have been found near the Delta pumps. Federal agencies are maintaining very precise and economically damaging pumping restrictions to provide fishery benefits that cannot be quantified, to fish we don't know are in a location to be harmed, in order to prevent harm that can't be

described or proven by science. This is beyond the bounds of rational decision making processes to me. In fact, fish salvage numbers at the pumps indicate that the most minor harm is taking place.

I'm saying that given the recent rains in California, I believe that with a little more common sense, and a little less fear of litigious interest groups, your agency could made the decision – today – to pump far more water to farms and cities and STILL provide robust safeguards for listed species.

The best available data show that take of protected salmon and smelt at the delta pumps has been nonexistent or negligible this year. Yet federal and state agencies are keeping pumping levels low while hundreds of thousands of acre-feet of water flow out to the sea, leaving dried up farms in the Central Valley. Let's look at just 1,000 acre-feet of that water for the Friant Division.

We know with certainty that for every thousand acre feet of water supply lost, such water could have kept 650 acres (one square mile) of citrus trees alive or 400 acres in full production. The economic loss to replace an acre of citrus and the lost crop production (3-5 years) ranges from $40,000 to $80,000 per acre, depending on specific crop type and availability of replacement trees from nurseries, according to analyses by UC Davis and industry sources. As a result, the loss of 1,000 af of water supply has a cost of $16,000,000 to $32,000,000. The loss of 100,000 af could result in over a $1 Billion impact. People will lose farms and agriculture related jobs. Communities will suffer (food banks, public assistance, increased crime, school enrollment, etc.). To date, there seems to be little to no take of smelt or salmonids at the pumps, even with increased pumping following storage events.

1. What quantifiable benefits will the fisheries derive from the policy decision to give them that extra 1,000 acre feet of water?

Response: State Water Resources Control Board (State Board) Decision-1641 (D-1641) and the NMFS and FWS biological opinions (BiOps) control operations to varying degrees throughout the year. Objectives include keeping species of concern from entering the area of influence caused by reverse flow in the Delta. In order to maintain compliance with these requirements, Reclamation and DWR coordinate management of the Federal and State water projects. In this drought year, the State and Federal agencies have worked closely to develop operational regimes that have maximized, to the extent possible, exports to San Luis Reservoir while protecting Delta water quality standards and species of concern.

2. What are the impacts to the fish of concern as a result of 1,000 acre feet less outflow to the ocean when there are in excess of 14,000 acre-feet per day of outflow?

Response: The value of the State Board protections include maintaining Delta water quality standards for municipal and industrial as well as agricultural diverters in the Delta; for example, Contra Costa Water District and South Delta Water Agency. Additionally the value of the BiOp protections includes keeping species of concern from entering the area of influence caused by reverse flow in the Delta. Protecting these standards and monitoring reverse flow allow water project operators to maintain a consistent exports, and ensure listed species are not jeopardized rather than creating a situation that would cause severe

degradation of water quality standards and other impacts.

3. What scientific data supports the answer?

Response: State Board and BiOp restrictions are supported by years of scientific data and analysis collected by the Interagency Ecological Program and analyzed through that program, as well as by other agencies, programs, and scientists in academia.

4. Is monitoring being conducted or could monitoring be implemented to validate impacts or lack thereof to fisheries?

Response: Additional monitoring for smelt, salmonids, and steelhead are being conducted to provide an early warning as to the presence of species of concern within the area of influence of the export pumps.

5. What other evidence supports that estimate of impacts?

Response: As stated in the answer to question 3 above, State Board and BiOp restrictions are supported by years of scientific data and analysis.

6. In making the decision to lower pumping levels and to effectively dedicate that water to the fisheries, did you consider the extent of agricultural acreage that would be lost?

Response: We consider loss of export capacity, but typically do not have the information to directly translate acre-feet of water to acres lost or other economic impacts. We seek to operate in the most efficient manner to meet all required operational objectives.

7. Did you consider the amount of permanent plantings that would be taken out of production?

Response: See response to question number 6.

8. Did you consider the extent of crops that would be fallowed?

Response: See response to question number 6.

9. Did you consider the amount of unemployment that could be caused, both within and beyond the agricultural sector?

Response: See response to question number 6.

10. Did you consider the impacts that would befall farm workers and disadvantaged communities?

Response: See response question number 6.

11. In developing Biological Opinions and Reasonable and Prudent Measures under the ESA, are economic impacts taken into account?

Response: The Federal ESA does require that economic impacts be considered when developing reasonable and prudent alternatives included in a jeopardy BiOp. As currently required by the Eastern District Court (result of Delta Smelt Consolidated Cases and Salmonid Consolidated Cases), Reclamation is conducting an environmental analysis under the National Environmental Policy Act that will include an evaluation

of socioeconomic impacts.

12. Will the salinity control barriers be placed in 2014? If so, when and where will the salinity control barriers be placed?

Response: Current plans do not include the barriers.

13. What actions is your agency taking to expedite the approval process?

Response: We closely coordinate with other regulatory agencies and utilize the Interagency Real-Time Drought Operations Management Team (RTDOT) as necessary to coordinate and facilitate our drought operations.

14. What analyses have you done to determine how water quality will be affected with and without the barriers?

Response: DWR has taken the lead in the barrier studies and has performed the water quality analysis.

15. Why is it that Shasta Lake currently has approximately 1,000,000 acre-feet more water in storage than it did in 1977 and yet the Exchange Contractors are receiving only 40% and having to take a significant portion of their water supply from the San Joaquin River and leaving everyone else at zero?

Response: We are under a different operating environment than in 1977. The system operates differently and water use is different than in 1977.

16. Does Reclamation acknowledge that the Sacramento River Settlement Contractors and the Exchange Contractors have senior water rights and that their water supply is not part of CVP yield?

Response: There are varying ways that the CVP yield is defined and methods to classify the water supplies to the senior water rights holders. We acknowledge that the settlement and exchange contractors have senior water rights.

17. Does Reclamation acknowledge that it cannot develop CVP yield to be managed unless and until it fulfills the senior water rights?

Response: Delivery to the senior water rights holders is among the highest priority purposes of the water supply managed by the CVP.

18. Did you take those facts into consideration in developing the scope of your consultation with the various regulatory agencies? Specifically, what actions were considered?
Response: Yes, specific actions are described in the project description of the biological opinions.

19. Has your agency recommended holding water in storage in the reservoirs? If so, what is the justification for holding water that belongs to the senior water rights holders -- that

Reclamation does not own -- in storage when the senior water rights have not been satisfied?

Response: Water is developed and stored under CVP water rights. For senior water rights holders, Reclamation's ability to meet our obligations to these users is contingent upon storing water in reservoirs like Shasta, Folsom and others.

20. What biological benefits will be provided by the Government seizing the senior water rights holders' supply and holding it upstream?

Response: *Increased storage in upstream reservoirs allows for a larger cold water pool that is critical for the successful spawning, incubation, and rearing of salmonids and steelhead.*

21. How were those benefits determined and how can they be substantiated?

Response: Modeling is completed monthly to determine temperatures downstream of major facilities; for example Keswick Dam on the Sacramento River and Nimbus Dam on the American River. This modeling output then informs fishery agencies, Reclamation, and DWR as to the best operational strategy to preserve cold water pool and the ultimate protection of species of concern.

Questions from Chairman Hastings:

Questions for the Bureau of Reclamation (Acting Commissioner Lowell Pimley)

1. A report generated by the Bureau of Reclamation stated that the November 18th, 2013 fire at the John W. Keys III Pump-Generating Plant that caused hundreds of thousands of dollars in damage was caused by three separate errors by Reclamation employees and had nothing to do with the regular operation of the plant. Will the Bureau be taking full responsibility for the costs of the extensive cleanup effort resulting for the fire? Will the Bureau work with the water users to determine a fair allocation of the equipment-related costs?

Response: During the performance of regular operations and maintenance, human error did occur in the November 18, 2013 incident. Reclamation discussed the distribution of associated cleanup and repair costs with the Columbia Basin Irrigation Districts (Districts). The Districts are currently reviewing the proposed distribution.

2. Please provide me with a dollar-for-dollar breakdown of how funds have been spent at the John W. Keys III Pump-Generating Plant since the November 18, 2013 fire, whether on regular operations and maintenance work or on the cleanup and repair efforts associated with the fire.

Response: The cleanup costs are approximately $1.1 million, which includes costs for labor, materials and supplies, contracts, and equipment. Cleanup costs were tracked separately from normal plant maintenance during the cleanup period. The Keys Plant cleanup is completed and normal water delivery to the Districts has resumed. A review of

equipment replacement is underway which will provide cost estimates. Replacement of the vast majority of the impacted equipment was already scheduled to begin in FY14-15 due to the equipment exceeding its original design life.

3. What contractual relationship does BPA have to provide funding to Reclamation for the operation of the John W. Keys III Pump-Generating Plant (JKPGP)?

   Response: Under a 1996 interagency agreement, BPA provides direct funding for power operations at all hydroelectric power facilities in the Region, including at Grand Coulee Dam. This agreement allows for day-to-day power operations and maintenance, and includes long-term planning and evaluation of proposed maintenance activities. For the Keys Plant, BPA provides direct funding for operations and maintenance activities. BPA direct funded their share of the November fire cleanup costs at the Keys Plant.

   Under a separate Memorandum of Agreement, BPA provides upfront funding for major capital infrastructure improvements at the power facilities, including at Grand Coulee Dam. BPA is not obligated to upfront fund the allocated power portion of capital projects at multipurpose facilities. However, BPA has agreed to upfront fund Reclamation Base Case Projects, which are a specific set of capital investment projects that are necessary to ensure the long-term reliability of the Keys Plant. Reclamation is currently working with BPA to put subagreements in place for the upfront funding.

4. What contractual relationship does BPA have to provide advance funding for the operation of the John W. Keys III Pump-Generating Plant?

   Response: See response to question number 3.

5. We have heard of a revised "Plan B" being developed for John W. Keys III Pump-Generating Plant improvements by Reclamation. What changes other than scheduling of improvements are being considered? When will this be available? Will we be able to comment on changes before finalized?

   Response: There is not a "Plan B." Reclamation provided a draft Reclamation Base Case plan for the needed replacement work at the Keys Plant to the Districts and BPA on May 11, 2012. Reclamation met with and received comments from both the Districts and BPA, which Reclamation considered in preparing its final plan. Reclamation transmitted the final Base Case plan to the Districts and BPA on March 7, 2014. The capital investment projects identified in the draft are the same as in the final plan.

6. Describe the process by which Reclamation decides how funding advanced by the districts is spent on John W. Keys III Pump-Generating Plant?

   Response: Reclamation's contract with the Districts requires that the Keys Plant operations, maintenance, and replacement costs be paid by the Districts at a rate based on the acre-feet of water Reclamation delivers to the Districts. The rate is reviewed and adjusted every 5 years. The next 5-year rate period starts on January 1, 2015. As part of the review and adjustment process, Reclamation projects the operations, maintenance, and

replacement work and corresponding costs for the next 5-year period. The scope of the projected work is discussed with the Districts and BPA. Once the 5-year period commences, Reclamation follows its projected plan as closely as possible, however, the projected plan routinely changes due to unanticipated events. Reclamation discusses changes and impacts to schedule and funding with the Districts and BPA. As owner of the facility, Reclamation retains the discretion to make the final determination on how to proceed with plant operations, maintenance, and replacement work.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 16 2014

The Honorable James Lankford
Chairman
Subcommittee on Energy Policy, Health Care and Entitlements
Committee on Oversight and Government Reform
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Department of the Interior to questions submitted following the Subcommittee's February 27, 2014, oversight hearing on *"Examining the Endangered Species Act."*

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Jackie Speier
Ranking Member

Questions for
Mr. Michael Bean
Counselor, Fish and Wildlife and Parks
U.S. Department of the Interior

Representative Jason Chaffetz
Subcommittee on Energy Policy, Health Care and Entitlements
Committee on Oversight and Government Reform

Hearing: "Examining the Endangered Species Act"

1. It is widely documented that taxpayer funded studies and data are used by the Fish and Wildlife Service (FWS) when making its endangered species determinations. Current FWS practices preclude the sharing of studies and data related to ESA listings, even though public funding was used. Please describe the internal policy, guidance, regulations, and/or statute that allow FWS to keep publicly funded data from the public.

Response: The Administration is committed to decision-making that is transparent and supported by public participation and collaboration. In line with this commitment and because high-quality science and scholarly integrity are crucial to advancing the Department's mission, the Department carefully documents and fully explains its decisions related to the listing of species under the Endangered Species Act, and provides public access to that the supporting information and data through established Department and Bureau procedures. By creating the Scientific and Scholarly Integrity Policy in January 2011, the Department of the Interior was the first federal agency to respond to the Presidential Memorandum on Scientific Integrity and the guidance provided by the Office of Science and Technology Policy Memorandum on Scientific Integrity.

While certain information and data may occasionally be withheld from disclosure under the terms of the Freedom of Information Act (e.g., confidential commercial information obtained from a person), current FWS policies and practices do not keep publicly funded data from the public. Under Federal Acquisition Regulations, the government's access and distribution rights extend only to data "first produced in the performance of" a contract. The FWS routinely provides data that it produces or obtains with respect to endangered species determinations upon request. It also posts on regulations.gov a list of the publications, reports, and studies on which it relied in making its listing determinations. Often, however, the Service contracts for studies to analyze data that were first produced

by States, universities, or other non-federal entities. Such was the case with study by Garton et al. that was discussed at the hearing which was undertaken by researchers affiliated with the Idaho, Oregon and Washington State wildlife agencies. In these instances, FWS neither obtains, nor has any right to release, the underlying data. State law regarding release of wildlife data can be restrictive. For example, Texas Government Code Section 403.454 prohibits the disclosure to any person of information that "relates to the specific location, species identification, or quantity of any animal or plant life" for which a conservation plan is in place or even under consideration.

2. How does the FWS intend to define and establish a baseline habitat disturbance metric, that is based on the most recent and scientifically accurate data, within Greater Sage-Grouse habitat areas in Utah?

Response: The Fish and Wildlife Service bases all of its listing decisions on the best available scientific data and actively solicits data from stakeholders, including local and state governments Habitat loss and fragmentation has been identified in the scientific literature as the primary cause of declining sage-grouse populations. These two items, along with the lack of sufficient regulatory mechanisms to address habitat loss and fragmentation, were the primary factors in the FWS's 2010 warranted but precluded determination for the greater sage grouse. In March 2013 the FWS released the Conservation Objectives Team Report, developed by state and FWS employees, which identifies the degree to which threats that resulted in the 2010 warranted determination need to be reduced or ameliorated to conserve sage-grouse so that the species is no longer in danger of extinction or likely to become in danger of extinction in the foreseeable future. For each individual state within the range of sage-grouse, the report identified Priority Areas of Conservation (PACs), which are key habitats necessary for sage-grouse conservation. Recommendations in the report are focused on conserving these areas of highest conservation value to the species. The extent to which disturbance within these areas can be avoided or minimized will determine the extent to which this threat to the species is reduced, a fact that will be fully considered in our 2015 listing determination.

Disturbance caps are being considered as a key method to address continuing habitat loss and fragmentation, the primary cause of sage-grouse population declines and the key factors contributing to the 2010 warranted but precluded finding. The FWS has not set such caps but is instead working closely with the species experts (including state biologists) and the primary species habitat managers (The Bureau of Land Management and the Forest Service) to address

this issue. However the FWS continues to support avoidance and minimization of all impacts to Priority Areas of Conservation, as identified by the Conservation Objectives Team report, as critical to species conservation.

3. How does the FWS plan to partner with and utilize state wildlife agency expertise and data pursuant to Congressional intent outlined in the Fiscal Year 2014 Omnibus Appropriation law?

Response: The U.S. Fish and Wildlife Service, recognizing that collaborative efforts are critical to species recovery, maintains strong partnerships with a wide variety of stakeholders including Federal, State and local agencies, tribes, conservation organizations, industry, private landowners and other concerned citizens In each listing determination, the Service requests information from the states and when species are identified as candidates to be listed under the Endangered Species Act, the Service works very closely with States, as well as Tribes, private landowners, partners, and other Federal agencies to carry out conservation actions for these species to prevent further decline. For example, the Fish and Wildlife Service's sage grouse "conservation objectives team" relied largely upon state data in identifying "primary areas for conservation." In this and other examples, the Department and its various agencies recognize and utilize the wildlife data that the states maintain.

Partnerships with States are critical to the Service's efforts to conserve listed species. Section 6 of the ESA encourages States to develop and maintain conservation programs for threatened and endangered species. Federal funding is available to promote State participation.

Finally, recognizing the value of working closely with States, the Service and States formed the Joint Federal/State Task Force on Endangered Species Act Policy (ESA JTF) in 2010. It was designed to be an executive-level opportunity for discussion among the state and federal fish and wildlife agencies. It is made up of eight state fish and wildlife agency directors and four representatives from each of the Services, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. It was created to provide a process to work together to identify, address, and make recommendations on policy affecting fish and wildlife resources.

In addition, late last year Interior Secretary Sally Jewell took part in announcing the Western Governors Association's regional Crucial Habitat Assessment Tool, or CHAT. Like the several individual state CHATs that preceded it, this CHAT uses

state wildlife data to identify crucial habitats and important wildlife corridors so that developers and land use decision-makers can site new projects where they are unlikely to entail significant resource conflicts. Interior Department agencies, including not only the Service, but also the Bureau of Land Management and U.S. Geological Survey, provided both financial and technical support for the development of these CHATs and expect to use them in future decision-making.

4. Please describe the internal policy, guidance, regulations, and/or statute that allow FWS to disregard wildlife populations found on non-federal land?

Response: FWS does not disregard wildlife populations found on non-federal land. The 2012 revised recovery plan for the Utah prairie dog states that "we emphasize conserving extant colonies, many of which occur on non-Federal lands [and] establishing additional colonies on Federal and non-Federal lands." The recovery objectives set forth in that plan make no distinction between prairie dogs on federal and non-federal lands. Moreover, FWS has underscored the importance of Utah prairie dogs on non-federal lands by entering into Safe Harbor Agreements and Habitat Conservation Plans for such lands as well as working with the School and Institutional Trusts Lands Administration to establish a Utah prairie dog conservation bank on State lands.

5. Please provide me with any and all data – including but not limited to raw data such as statistics or figures, scientific literature, studies, tests, or any other type of information – used by FWS in making its endangered species determinations for the Greater Sage Grouse, Gunnison Sage Grouse and prairie dog.

Response: Attached, please find a list of the scientific literature used by the FWS in making its endangered species determinations for the Greater Sage Grouse, Gunnison Sage Grouse, and the Utah prairie dog. Since the complete scientific record for each of these species is quite voluminous, the Department will be happy to work with the Committee to identify specific documents that will assist the Committee in its oversight of the Endangered Species Act.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY - 6 2014

The Honorable Doug Lamborn
Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Geological Survey to the questions for the record submitted following the March 27, 2014, hearing on Advances in Earthquake Science: 50th Anniversary of the Great Alaskan Quake.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Rush Holt
Ranking Minority Member

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
OVERSIGHT HEARING ON
"Advances in Earthquake Science: 50th Anniversary of the Great Alaskan Quake."

1334 Longworth House Office Building
March 27, 2014

QUESTIONS FOR THE RECORD

From Chairman Doug Lamborn:

1. **Is there a requirement to complete a structural analysis of the rock formation(s) the injection wells are penetrating for disposal of waste fluid to determine if there are faults or other structures that could be reactivated when fluid is injected into the formation?**

   Underground injection of wastewater is regulated under the Safe Drinking Water Act, and wells are permitted under the EPA's Underground Injection Control (UIC) Program. Under UIC regulations, EPA can delegate primary enforcement authority to a state if the state program is demonstrated to be appropriate within regulatory requirements. States can have more stringent regulations than required by EPA. Thus, requirements vary from State to State.

   For UIC class II wells (those permitted for disposal of wastewater from oil and gas production activities), USGS is unaware of any EPA or state requirement for a structural analysis of the rock formation as a permit condition, or for the identification of faults or other structures that could generate earthquakes.

2. **What are the geologic features needed for an injection well?**

   This question would best be directed to the EPA. Wastewater disposal is regulated under the Safe Drinking Water Act, and wells are permitted under the EPA's Underground Injection Control (UIC) Program. The geologic features that are needed will depend on the volume of fluid to be injected, the capacity of the formation to accept fluid, the depth of the injection zone, the in-situ state of stress, the presence of nearby large-scale faults, and other factors.

3. **Are there examples of induced seismicity resulting from the injection of waste fluids other than fluids used for fracking?**

   Yes. In fact, most of the waste fluids disposed of in UIC Class II wells are not fracking fluids but natural brines that are produced during oil and gas extraction (these are sometimes called produced waters). Also, one of the best-studied cases of induced seismicity was at the Rocky Mountain Arsenal site, near Denver, Colorado, which involved the disposal of nerve gas during the mid-1960s. The project triggered an extensive earthquake sequence, including one event of magnitude 4.9 and several others that were only slightly smaller. This incident occurred before passage of the Safe Drinking Water Act and creation of federal underground injection regulations.

In addition, the Bureau of Reclamation operates an injection facility in Paradox, Colorado, as part of the Colorado River Salinity Control Program. Saltwater brine is injected under high pressure into a fractured limestone formation located 2.6 miles below the surface. This project has been in production operation since 1996. The largest earthquake apparently induced to date by this Paradox facility was a magnitude 4.3 earthquake in 2000. These wells are underground injection facilities with permits designed to manage risks. The Bureau of Reclamation's Paradox Valley Unit actively monitors the safety of the operations using an extensive seismic network and records of daily injection volumes and pressures.

From Ranking Member Rush Holt:

1. **How can the USGS help alert people to the seismic risks in their area due to wastewater injection? How can your seismic hazard maps be updated, or how can additional information be provided that would work in conjunction with the seismic hazard maps, to reflect that risk?**

   With funding provided by Congress this year, the USGS is working to develop techniques to distinguish induced earthquakes from natural (tectonic) earthquakes and to quantify the hazard posed by induced earthquakes. This work is spurred by the significant increase in earthquake rates in the Central U.S. since 2001, and the current swarm of earthquakes in Oklahoma and southern Kansas.

   The USGS National Seismic Hazard Maps are the basis for the seismic provisions of building codes; consequently, the calculated hazard values provide a metric for building safety on a 50-year time frame. It would not be appropriate for short-term fluctuations from induced earthquakes to influence these longer-term hazard calculations. Instead, we are considering developing a separate product, perhaps an overlay to the National Seismic Hazard Maps, that focuses on shorter-term earthquake probabilities (including those that are induced) and is therefore updated more frequently.

   In the meantime, to inform the public we have issued statements about induced earthquakes and earthquake swarms and their implications for earthquake safety, as well as a number of scientific publications that have received media attention.

2. **What volumes of injected fluid, on a monthly or cumulative basis, would cause an injection well to be considered a high-hazard well for induced seismicity?**

   Most injection wells do not trigger felt or damaging earthquakes, and there is no specific injected-volume threshold over which a damaging earthquake will be triggered. However, it appears that the greater the total (cumulative) injected volume, the larger the potential triggered earthquake. Thus, high-volume wells are often high-hazard wells, although there are other factors that contribute to earthquake triggering at injection well sites.

   Whether fluid injection at a given depth induces earthquakes is highly dependent on geologic and hydrologic conditions in the vicinity of the injection interval. Factors that influence the seismic response to injection include porosity, permeability, state-of-stress, fault distribution, the past history of fluid injection or production, reservoir extent and the characteristics of the rock mass that experiences elevated pore pressure.

3. **Is there a connection between surface injection pressure and seismic hazard posed by wastewater injection?**

   Yes, high pressure is associated with higher potential for triggering an earthquake. The triggering potential is especially high when the pressure at the injection point is higher than the pressures required to trigger fault slip. However, low-pressure injection wells may also trigger earthquakes over time, as the injected wastewater volume increases the formation water pressure (e.g., by raising the water table).

   Additionally, wellhead pressure often, but not always, tends to be proportional to injection rate, which has a direct effect on the seismic hazard. That is, the rate of induced earthquake occurrence commonly increases with increased injection rates. Injection that results in pore pressure increase in the crystalline basement rocks appears to have a higher likelihood of increasing the earthquake hazard than injection into a sedimentary aquifer with high permeability and porosity.

4. **For a given injection well, what magnitude earthquake within what distance should trigger a more in-depth examination of the injection, or a review of the permit conditions?**

   To date, we have seen evidence that earthquakes can be triggered as far as 10 km (6 miles) away from injection activities—although there is no fixed distance to which fluid pressure migration from an injection activity could trigger fault slip. For earthquake magnitudes, thresholds requiring permit review could be site-specific, depending on factors such as proximity to people and engineered structures, natural levels of seismicity, etc.

5. **Is there a cumulative volume for injection that should trigger a permit review? Should closely spaced wells injecting into the same formation be considered as single wells? If so, what would that spacing be?**

   As noted above, there is no specific injected-volume-threshold over which a damaging earthquake will be triggered, yet it appears that the greater the total (cumulative) injected volume, the larger the potential triggered earthquake.

   In evaluating potential for induced seismicity, multiple wells injecting into the same formation should be considered as a single estimate if they are within about 10 km of each other, but each such case should be examined on its own merits because subsurface geology and hydrology is highly variable. If multiple wells, not widely separated, are injecting into the same formation, then the cumulative injected volume should be taken as the total volume injected by all of the wells that are likely to contribute to a pressure perturbation at depth.

6. **What specific injection data would the USGS need in order to better understand the potential link between seismic activity and individual injection wells?**

   Data needed include daily recordkeeping of injected volume, average and maximum wellhead pressure, reported monthly and made public electronically 30 days thereafter. For injection sites that are experiencing felt- or micro-earthquakes, USGS research and forensic analysis would also benefit greatly from locally recorded seismic data, made

available in real-time. To gauge the potential for a new injection site to trigger earthquakes, stress measurements at the injection point and in underlying crystalline basement, prior to the start of injection, would also be valuable, along with geophysical well logs and hydrologic testing to determine formation permeability and porosity, ambient (pre-injection) formation fluid pressure, and rock physical properties.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY - 5 2014

The Honorable Barbara Boxer
Chairman
Committee on Environment & Public Works
U.S. Senate
Washington, D.C. 20510

Dear Chairman Boxer:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Committee's September 18, 2013, oversight hearing on *"Implementing MAP-21's Provisions to Accelerate Project Delivery."*

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable David Vitter
Ranking Member

Environment and Public Works Committee Hearing

September 18, 2013

Follow-Up Questions for Written Submission

Questions for Ashe

Senator Barbara Boxer

Question 1. Director Ashe, MAP-21 and the Water Resources Development Act require the action agency to receive the concurrence of resource agencies in setting deadlines for environmental review.

Do you agree that the requirement that resource agencies concur with project review timelines is important? If so, please describe why it is important to require action agencies to get the concurrence of resource agencies in the environmental review process?

Response: Yes, it is imperative that resource agencies are afforded the opportunity to weigh in on project timing decisions. Resource agencies, like the U.S. Fish and Wildlife Service, must prioritize funding and workloads in order to meet transportation and water project deadlines. Having those parameters considered in the development of a timeline for a project up front will allow resource agencies to plan for these projects and meet deadlines.

Question 2. Director Ashe, you mentioned multiple times in your testimony the benefits of early coordination in the transportation planning process. Could you elaborate on how the Fish and Wildlife Service, particularly your field offices, works with project sponsors early in the planning and project development phases to identify, lessen, or mitigate adverse environmental impacts?

Response: A number of agencies, including the U.S. Fish and Wildlife Service, play a critical role in achieving the goals of the transportation industry. Resource and other partner agencies coordinate with state and local transportation agencies during planning to identify and consider ways to avoid and minimize potential environmental impacts from transportation activities. This early coordination helps improve decision-making. Early communication and collaboration within and among transportation and resource agencies links transportation planning efforts with project development and permitting processes, making the process more efficient. This approach aims to:

1. Improve resource agency understanding of transportation projects at an early planning stage and throughout the project development.
2. Improve the project proponent's understanding of environmental regulatory requirements.
3. Serve the transportation needs of the community.
4. Improve transportation decision-making.
5. Reduce time and costs to implement transportation improvements.
6. Obtain broader, landscape level conservation.

The Service encourages early and sustained involvement with transportation agencies by supporting programmatic mitigation plans, programmatic ESA Section 7 consultation, and reimbursable funding agreements for transportation activities. A few examples of successful early coordination between resource and transportation agencies are provided below.

State Route 79 Realignment Project

Through early coordination under the NEPA / 404 MOU coordination process, the State Route 79 Realignment Project Resource Agency Group (Resource Agency Group) identified an innovative solution that avoided an ecologically significant vernal pool region while still providing for transportation needs. At the beginning of the coordination process, the locally preferred alternative (i.e. Central Alignment) to realign a 19-mile stretch of roadway would have resulted in severe impacts to the Salt Creek Plain, which is arguably the most significant remaining vernal pool area in Riverside County due to its high diversity, large size, and abundance of rare and endemic species, including five federally listed species. The Central Alignment would have bisected the Salt Creek Plain, altering the hydrologic regime upon which the vernal pool habitat depends. By working together early in the planning and project development process, the Resource Agency Group (Federal Highway Administration, California Department of Transportation, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service (Carlsbad Fish and Wildlife Office)) along with representatives from the Riverside County Transportation Commission, their consultant CH2M HILL, and the City of Hemet) were able to identify a mutually agreed upon alternate road alignment that avoids the Salt Creek Plain, satisfies the transportation need, and will facilitate the identification of the least environmentally damaging practicable alternative for the purposes of NEPA and Clean Water Act permitting. In addition, recently submitted draft environmental technical reports thoroughly address wildlife connectivity in an effort to protect critical ecosystem functions through the incorporation of numerous new bridges and culverts. The project was selected, from a very competitive field of nominees, as the winning recipient of the U.S. Fish and Wildlife Service's 2010 Transportation Environmental Stewardship Excellence Award.

Floyds Fork Greenway Project

In July 2010, the Kentucky Ecological Services Field Office (Kentucky ESFO) concluded coordination and ESA consultation with the Federal Highway Administration (FHWA), Kentucky Transportation Cabinet (KYTC), and 21st Century Parks (a 501(c)(3) non-profit organization) on the Floyds Fork Greenway Project. The project is located in Louisville, Jefferson County, Kentucky and involves the development of multi-use recreational trails, water trails, canoe landings, community parks, natural and cultural resource interpretation areas, and connecting infrastructure on approximately 3,860 acres over an 18-mile corridor. The Floyds Fork Greenway Project posed several challenges during the project development and consultation process due to the involvement of both federal and private funds, the complexity of interrelated and interdependent actions, and potential adverse affects on federally listed species. In order to address these challenges, the Kentucky ESFO provided technical assistance prior to ESA consultation and made recommendations for streamlining the consultation process. Early coordination between project proponents and the Kentucky ESFO resulted in the inclusion of environmental goals and commitments into the project master plan to address several trust resource concerns. To provide for flexibility in project timing and predictability, the project proponents entered into a Conservation Agreement for the Indiana bat, which provided recovery-focused conservation benefits to the species.

Early Planning and Advanced Mitigation; Little Niangua River, Missouri

In order to plan early and address anticipated impacts to streams from ongoing and future road projects proposed for central Missouri, the State Department of Transportation (MoDOT) coordinated with Federal and State agencies to develop advanced mitigation banks for wetlands and listed species. The Service's Columbia Missouri Field Office had previously established a partnership with the Columbia National Fish and Wildlife Conservation Office and the Missouri Department of Conservation to replace low water

crossings within the range of the threatened Niangua darter in the Ozarks. Early communication and coordination amongst these organizations and the transportation agency led to a proposal by MoDOT to replace four consecutive low water crossings in the Little Niangua River to act as an aquatic mitigation bank for future transportation projects. The Federal and State agencies collaborated with MoDOT to determine a credit value on replacing 4 low water crossings, and the bank was approved by the Interagency Review Team as compensatory mitigation for future MoDOT project impacts to wetlands and the threatened Niangua darter. This early coordination among resource and transportation agencies was a significant factor in linking early planning and advanced mitigation to project delivery.

Senator Sheldon Whitehouse

Question 1. Lead agencies may establish a schedule for completion of the environmental review process "after consultation with and concurrence of each participating agency...." 23 U.S.C. 139(g)(B). With respect to the dispute resolution process established in MAP-21, a lead agency is required to consult with relevant agencies, but their concurrence appears not to be required by statute in all cases.

Deadlines. The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies. 23 U.S.C. § 139(h)(4)(B), as amended by MAP-21 Section 1306 (emphasis added).

Is it your interpretation of this provision that a lead agency need not seek the concurrence of the project sponsor and other relevant agencies to set deadlines subject to dispute resolution? If so, under what circumstances in which a lead agency may set a deadline without agreement of the project sponsor and relevant agencies? What are examples of the types of deadlines that may be set in those circumstances?

Response: Yes, with regard to **dispute resolution**, it is our understanding that the lead agency does not need to secure **concurrence** from other agencies or the project sponsor when setting deadlines (only consultation is required). We do not see this as a major issue. In practice, this happens only rarely and when it does, lead and participating agencies typically sit down and discuss what is reasonable in terms of collecting information and preparing for dispute resolution talks. The deadlines referenced are normally either dates for meetings or the preparation of reports.

SEC. 1306. ACCELERATED DECISIONMAKING—Section 139(h) of title 23, United States Code, is amended by striking paragraph (4) and inserting the following:

"(4) Interim decision on achieving accelerated decision making

"(B) Deadlines—The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies.

Senator James Inhofe

Question 1. The Endangered Species Act (ESA) has rigid procedural deadlines that force the Fish and Wildlife Service (Service) to make decisions about whether to list species as endangered or threatened once petitioned. Often, the service does not have sufficient resources to consider all of the data, conservation agreements, alternative science, or other factors when operating within the statutory deadlines. This has become particularly evident since the Service's funding level has been reduced in recent years. In light of this, are you open to the statutory timelines in the ESA being extended to provide the Service with more time and discretion to make decisions required by the Act?

Response: The statutory deadlines for petition findings, listing determinations, and critical habitat designations are achievable, and we have worked within these timeframes successfully for over 30 years. We consider them appropriate for determining whether to extend the protections of the Act to species that are in trouble. Timing constraints are most often due to conservation efforts or research being initiated late in the process, in response to a proposed listing determination, as opposed to early and proactive work upon the determination of a species as a candidate for listing. The more stable and predictable work planning in recent years is helping to address that problem.

Question 2. The ESA also has a number of terms governing the Service's listing decisions that are not well defined. This often results in the Service being subjected to significant litigation risk. Such terms include, among other things, "in the foreseeable future," and "best scientific and commercial data available." Would you be open to these definitions being clarified to more clearly establish what the Service's obligations are under the Act?

Response: We consider the interpretation of those terms or phrases to be appropriately within the administrative authority of the implementing agencies, consistent with Congressional intent. We have interpreted these and other terms and phrases in a manner that reflects the range of circumstances in which they must be applied, and we will continue to do so as needed. We consider this approach to be the most effective way to proceed in interpreting and implementing the Act.

Question 3. 16 U.S.C. 1533(f) states that recovery plans must be developed by the Service for listed species that, once met, "would result in a determination, in accordance with the provisions of this section, that the species be removed from the list;" however, the Statute does not mandate that the Service make such a determination at that time. Would you support an amendment to the statute that would require the Service to make delisting decisions once a recovery plan has been implemented and the "objective, measurable criteria" in the plan have been met?

Response: Recovery plans are advisory, not action forcing, and we consider it most appropriate that they remain so. While recovery plans significantly inform our decision on whether to delist a species, the decision is fundamentally based on whether the species still meets the definitions of a threatened or endangered species, considering the five factors set forth in the statute. We assess the status of species in our five year reviews and then move forward to reclassify or delist as appropriate. We consider this approach to be the most flexible and effective means to determine whether a species warrants delisting.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 0 1 2014

The Honorable Mary Landrieu
Chair
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chair Landrieu:

Enclosed are responses prepared by the Bureau of Reclamation to the questions for the record submitted following the February 27, 2014, legislative hearing on the following bills pertaining to Bureau of Reclamation authorities:

- S. 1771, the Crooked River Collaborative Water Security Act of 2013
- S. 1800, the Bureau of Reclamation Transparency Act
- S. 1946, a bill to amend the Reclamation Safety of Dams Act of 1978 to modify the authorization of appropriations
- S. 1965, a bill to amend the East Bench Irrigation District Water Contract Extension Act to permit the Secretary of the Interior to extend the contract for certain water services
- S. 2010 and H.R. 1963, the Bureau of Reclamation Conduit Hydropower Development Equity and Jobs Act
- S. 2019, SECURE Water Amendments Act of 2014
- S. 2034, the Reclamation Title Transfer Act of 2014

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure
cc: The Honorable Lisa Murkowski, Ranking Member
Committee on Energy and Natural Resources

Mr. Robert Quint, Bureau of Reclamation:

FROM SENATOR SCHATZ

1. Mr. Quint, S.2019 removes the authorized appropriations cap for the Bureau of Reclamation WaterSMART grants program. Can you discuss the impacts to Western states if Congress does not act to raise or remove the spending cap this fiscal year?

   ANSWER: WaterSMART allows the Department to provide incentives and tools to achieve sustainable supplies, while supporting water managers who make their own decisions about what programs and activities will be the best and most practical fit in their particular watersheds. Reclamation estimates that the authorized appropriations ceiling will be reached in FY 2015. If Congress does not raise or remove the spending cap this fiscal year, Western states stand to lose use of this highly valuable and widely utilized program, which is significantly contributing to drought resiliency in the West.

2. Drought and water scarcity are a serious issue in many parts of the country right now. Yet a comprehensive and current national assessment of water resources does not exist. Can you talk about the benefits of having a better understanding of regional and national water availability and use? And please give some perspective on the barriers to completing such a national assessment.

   ANSWER: The U.S. Geological survey (USGS) responds that a better understanding of regional and national water availability and use is critical to the Nation. The type of information derived from a national water assessment provides the Federal government with information to make informed decisions regarding Federal investments in water resources infrastructure. Programs within the Bureau of Reclamation, the Department of Agriculture, the Department of Energy, the Army Corps of Engineers, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration, to name just a few, rely on an understanding of the Nation's water availability and use in conducting their missions. These programs invest hundreds of millions of dollars each year toward protecting and sustaining the Nation's water supply. These programs continue to depend upon up-to-date data and information about our water resources and an accurate assessment of future demands for water, and the National Water Availability and Use Assessment is designed to provide that type of hydrologic information in an on-going fashion on a national level.

   In addition, our Federal government relies upon information concerning water availability and use to enact laws, develop and implement regulations, and set and carry out policies pertaining to water resources. We need to ensure that our laws,

regulations, and policies are directed at the most pressing water-related issues and designed to produce the most beneficial effects with respect to our water resources. A National Water Availability and Use Assessment will provide the technical information needed to make water-related decisions and achieve the best possible outcomes.

Finally, our society makes decisions on investments every day that need to be guided by this type of information. The energy industry makes an investment in constructing new generating facilities and must know if there is enough water to satisfy the cooling demands; the manufacturing industries invest in new factories which need water, and they must know if the locations they are selecting can provide the supply; and a city needs to plan for its next 50 years of growth and must understand the trends in water use and supply. These are critical and costly decisions which require a sound base of understanding in water availability and use.

The Bureau of Reclamation and the USGS are both involved in Federal interagency efforts to integrate and make accessible existing water availability and use data. USGS participates in the Integrated Water Resource Science and Services (IWRSS) effort together with the Army Corps of Engineers and NOAA's National Weather Service. Both agencies are active in the work of the White House Office of Science and Technology Policy to create a comprehensive data base of Federal water data as part of the President's Climate Data Initiative.

The USGS perceives five major barriers to completing a national assessment of freshwater availability and use: challenges in gathering information from other Federal agencies involved in water availability, a fragmented approach to State water resources information management, inadequate resources, lack of interoperability, and various institutional barriers.

3. In your written testimony, you mention the energy-water nexus, something I am very interested in. Can you please shed some light on how WaterSMART relates to the energy water nexus?

ANSWER: Clearly there is a strong connection between energy and water. As the second largest producer of hydropower, Reclamation has an interest in the conservation of both. Through the WaterSMART Program, Reclamation provides cost-shared grants to States, tribes, and other entities for projects that achieve water efficiency improvements, and proposals that not only address water conservation but also explore the use of renewable energy. Other energy efficiency improvements receive additional consideration during the selection process. Projects funded to date have included incorporation of new hydroelectric turbines on canals and conduits, installing automated systems on facilities to

increase energy efficiency, and constructing storm water recharge systems to take advantage of local water, thus minimizing the need to pump water from distant sources. Sponsors of WaterSMART grant projects are asked to explain how their proposed water efficiency improvements can be expected to lead to energy savings as well, and the methods used to estimate energy savings are shared with other water managers as they plan future improvements.

4. Mr. Quint, I'd like to ask you a question about the title transfer bill that I introduced earlier this week. We know the Bureau is interested in conveying title of some of its facilities to project beneficiaries, but I wonder if you can discuss the level of interest on the part of potential recipients, and also explain why title transfer is often a good option for the recipients as well.

ANSWER: Reclamation has fielded many inquiries from water districts about the possibility of title transfer and since 1995, has transferred title to 27 projects or parts of projects. To proactively engage with a larger number of water districts to identify and evaluate the potential public benefits of title transfer, including more efficient management of water and water-related facilities, Sec. 3 of S. 2034 establishes a title transfer program. Title transfer can increase operational flexibility and can potentially remove obligations – such as certain reporting and permitting requirements that exist by virtue of the fact that the facilities are owned by the United States. We also see title transfer as a tool for assisting water users to address long term maintenance needs associated with an aging infrastructure. In many cases, the entities that operate the projects would like to undertake major maintenance efforts that, by law, are their responsibility. However, they cannot borrow the needed capital because they do not actually own the facilities and therefore do not have sufficient collateral. Taking title gives them the flexibility to pursue financing opportunities that would otherwise not be available.

5. The title transfer bill gives the Bureau of Reclamation authority to convey titles of certain eligible facilities to willing project operators, also referred to as project beneficiaries. As I discussed earlier, currently an act of Congress is required to transfer these titles. This bill is aimed at uncomplicated projects where all parties are able to reach agreement on the terms of the transfer. If this bill were to become law, what would you see as Congress's role for more complex projects, such as those involving preference power rates or other complicating factors?

ANSWER: S. 2034 creates a second track for pursuing title transfer from that which we already pursue. The inclusion of project power in some cases may add a level of complexity to the title transfer process, which may not be appropriate for the type of non-controversial title transfers envisioned in S. 2034. Therefore, projects with complicating factors would continue through the same process as

they do today, where we develop a unique title transfer agreement and work with Congress to authorize that transfer. That is the same process as we use today and it would be available under this program.

6. Mr. Quint, I am pleased to see that the Department supports S. 1946. My question is what, if any, external reviews or audits of the Dam Safety program have taken place and what are those findings?

   ANSWER: Reclamation's Dam Safety Program has been reviewed annually since 1997 by an external independent review panel. Their general conclusions have been that the program is comprehensive, well organized and in conformance with Federal Guidance and that it contributes to the establishment of best practices for the industry.

FROM SENATOR WYDEN

7. Mr. Quint, the Crooked River bill aims to strike the balance between competing demands for a scarce resource: water from the Crooked River. There are concerns that some groups will have more influence than others on how water is actually allocated. How does the Bureau interpret the bill's language that directs the Bureau to work with the Confederated Tribes of the Warm Springs and the State of Oregon for guidance on the annual release schedule? Would the Tribe be able to dictate to the Bureau how water is released as a co-manager of the resource?

   ANSWER: Reclamation believes the provisions of Section 7 create potential conflict if the federal, state and tribal management priorities for Crooked River flows from Bowman Dam are not aligned every year. Likewise, the repeated reference to downstream fish and wildlife benefits appears to create restricted discretion to address in-reservoir or upstream fish and wildlife needs. As drafted, we do not believe the bill would enable the tribe to "dictate" how water is released. As noted in our testimony, the bill alters but does not eliminate Reclamation's discretion in operating the dam; however the change in discretion is not entirely clear.

FROM SENATOR MURKOWSKI

8. **On S. 1771:** To your knowledge, could there be any other alternatives to augmenting water supplies to the City of Prineville other than Prineville reservoir?

ANSWER: Prineville Reservoir is the only Reclamation reservoir option for the City of Prineville. We have not been involved with or are aware of any efforts by the City to consider alternative water supplies.

9. **On S. 1771:** What type of an analysis would you say needs to be carried out to assess the impacts (if any) on current water consumers of withdrawing 5,100 acre-feet of water from the Bowman Dam for the City of Prineville?

   ANSWER: Issuing a contract to the City of Prineville would normally require an analysis of all anticipated impacts of the proposed action conducted as part of the National Environmental Protection Act (NEPA) compliance process. It is possible that S.1771's proposed contract with the City of Prineville for 5100 acre-feet of storage would be covered by a categorical exclusion; however, it may require an environmental assessment.

10. **On S. 1800:** Can you please describe what exactly is being done currently to asses and estimate future needed repairs to BOR's assets? What are the associated costs? How would the proposed new assessment address missing information?

    ANSWER: Reclamation's annual budget request provides Congress with the best representation of the appropriated funds needed for identified maintenance activities at Reclamation's facilities. However, concurrent with the budget request, there is a significant amount of maintenance that is funded "off budget" with Reclamation's water and power customers, pursuant to advance funding agreements. While this process has worked well to provide for continued reliability of Reclamation's infrastructure, we recognize that Congress would like more information on how Reclamation assesses and estimates future repair needs. To that end, we have provided to Senator Barrasso's office a redline set of edits to S. 1800, consistent with Reclamation's testimony, which we believe would improve implementation of the bill while streamlining the data gathering required by the legislation within Reclamation's existing budget and asset management processes. This effort is anticipated to improve the data collected from our water and power customers, which is integral to a comprehensive representation of our asset management responsibilities. Reclamation has initiated an activity that will achieve the objectives stated above and is consistent with the redline version of S. 1800 provided.

11. **On S. 1800:** The bill calls for a very detailed analysis of all project plans and associated costs of major repairs and rehabilitation of BOR facilities. CRS

testified that Reclamation operates a Facility Maintenance and Rehabilitation Program that identifies, schedules, and prioritizes the needs of its reserved works but that the reviews are typically not made public. The Bureau, according to CRS, also conducts periodic maintenance reviews at transferred works through its Associated Facilities Review of Operations and Maintenance Examinations program but again, these results are typically not made public. It would seem then, that most of the data called for in this bill is already available to Reclamation in some form. Do you agree? If not, please explain.

ANSWER: It is true that a wide variety of information exists specific to maintenance needs at Reclamation facilities through review activities and other processes; however, the reviews alone do not provide detailed project plans with schedules and associated costs. In addition, there are various program-specific approaches used for determining priorities and funding needs (e.g., dam safety modification work, power facility O&M financing, reserved works O&M, transferred works O&M, etc.) which are effective, and explainable to affected Reclamation water and power customers, but which do not lend themselves to being combined into a single document that represents future major rehabilitation and replacement (MR&R) needs. The data from these sources is extremely variable in its level of refinement, and is utilized at widely varying levels of detail. As such, a single document that can clearly explain the prioritization of maintenance work on all Reclamation assets does not exist and cannot be created accurately with the data currently available. In view of this, January 2014, Reclamation began a process to streamline its collection, compilation and analysis of this data. We expect this process to take the next 18 to 24 months to complete, and it will require the active engagement of our stakeholders who operate two-thirds of Reclamation's water and power infrastructure and are essentially responsible for the funding and accomplishment of maintenance needs at these facilities.

12. **On S. 1946:** Some call for better planning when it comes to assessing the needs for future repairs of BOR assets (for example, as proposed by S. 1800, which is on today's agenda).
    a. First, what is currently being done to assess these needs?
    b. Second, will providing the Bureau with unfettered discretion to allocate as much funds as needed to address future infrastructure repairs lead to funds being expended on non-essential activities or other potential unnecessary expenditures? How would BoR ensure that federal dollars are being spent wisely?

ANSWER: (a) Assessment of needs for future dam safety work is conducted pursuant to the Safety Evaluations of Existing Dams line item in Reclamation's annual budget request. Performance monitoring, on-site examinations, field data

investigations, and technical studies are performed on an ongoing or recurring basis for all 370 Reclamation dams covered by the program.
(b) Reclamation has established a risk-informed decision making process to meet the objectives and stay within the intent of the Safety of Dams Act. Risk-informed procedures are used to assess the safety of Reclamation structures, to aid in making decisions to protect the public from the potential consequences of dam failure, to assist in prioritizing the allocation of expenditures, and to support justification for risk reduction actions where needed. The Safety of Dams Act requires Congressional approval for individual modification projects and that will not change if S. 1946 is enacted.

13. **On S. 1965:** Do you foresee any contractual issues/problems with extending the East Bench Irrigation District's water service contract with the Bureau by 10 years versus the previous several extensions, all of which were for a period of only four years? Do you think there could be any potential adverse effects on other users of that specific Clark Canyon Dam and Reservoir water supply?

ANSWER: No, Reclamation does not foresee any contractual problems or potential adverse effects with extending the East Bench Irrigation District's water service contract by 10 years. S. 1965 would extend the contract for six years beyond Public Law 112–139 for a total of ten years (to December 31, 2019) or until the new contract is confirmed and still defer to the court to take up the issue again at a time of its choosing. The Department believes that a 10-year extension under S. 1965 will allow adequate time for confirmation of the new contract by the Montana Fifth Judicial District Court.

14. **On S. 2010/H.R. 1963:** As you know, Congress recently enacted Public Law 113-24, the Bureau of Reclamation Small Conduit Hydropower Development Act, to amend the Reclamation Project Act of 1939 to authorize the development of small conduit hydropower at Reclamation project facilities. However, a handful of Reclamation projects, which were originally authorized under the Water Conservation and Utilization Act (WCUA), were not included in the hydropower authorization. These include four projects in Montana, two in Idaho, two in Utah, and one each in Colorado, Idaho, Nebraska and South Dakota. Does the Administration support authorizing hydropower development at these facilities?

ANSWER: Yes, Public Law 113-24 amends the Reclamation Project Act of 1939 to authorize all Reclamation conduit facilities for non-federal hydroelectric development through a Lease of Power Privilege (LOPP). Note that Reclamation conduit facilities were eligible for non-federal development prior to the enactment of Public Law 113-24 through either the LOPP or FERC licensing process.

WCUA projects are not subject to Public Law 113-24, because WCUA projects were not authorized pursuant to Reclamation law, including the Reclamation Project Act of 1939, as amended. WCUA projects are only subject to Reclamation law where explicitly identified in the WCUA, and the development of non-federal hydropower found in the Reclamation Project Act of 1939, as amended, is not explicitly identified in the WCUA.

Current language in the WCUA prohibits non-federal development by requiring the United States to retain all revenues derived from the development of hydropower facilities at WCUA projects. S.2010/HR 1963 would allow non-federal entities to construct non-federal hydropower facilities at WCUA projects and retain revenues derived from such non-federal hydropower facilities.

The Administration supports authorizing Reclamation to enter into LOPP contracts for the development of new non-federal hydropower on WCUA projects, provided that such non-federal hydropower developments do not impair the purposes for which the WCUA projects were initially constructed, as specified in the Reclamation Project Act of 1939, as amended.

15. **On S. 2010/H.R. 1963:** It was brought to my attention that charges paid by LOPP lessees as applicable to this bill need to be credited to the U.S. Treasury and not to the BOR fund, as stated in the current version of this bill. Can you please clarify this point?

ANSWER: Initial construction costs for Reclamation projects were typically financed by the Reclamation Fund. In accordance with federal Reclamation law, LOPP charges paid by non-federal hydropower developers are covered into the Reclamation Fund as a credit to the account of the Reclamation project from which the power is derived. In contrast, initial construction costs for WCUA were typically financed by the General Fund of Treasury rather than the Reclamation Fund. If LOPP charges derived from non-federal hydropower development at WCUA projects are placed into the Reclamation Fund, then Reclamation does not have a mechanism to transfer those credits to the appropriate WCUA project account in the General Fund of the Treasury. Therefore, if the intention of S. 2010 is to credit LOPP charges from WCUA projects to the affected WCUA project account in the General Fund of the Treasury, additional clarification is necessary in Section 2(g) of S. 2010 detailing where the charges will be covered and how they will be applied to the affected WCUA project account in the General Fund of the Treasury.

16. **On S. 2019:** calls for unrestricted spending on WaterSMART grants and related USGS grants. Both programs under current law are authorized at a combined level of $215 million. In this climate of necessary spending cuts, do you believe

we need to authorize unlimited spending for these grants through fiscal year 2023?

ANSWER: S. 2019 removes the cost ceiling for WaterSMART grants and related USGS grants. Under S. 2019, Congress would continue to control the annual funding for these programs, as they remain subject to Congressional appropriations. The Department is committed to continuing the WaterSMART Program, as the Federal Government has a responsibility to provide leadership and tools to address the challenges of imbalance between supply and demand.

17. **On S. 2034:** The goal of S. 2034 is to streamline the title transfer of Reclamation projects and facilities and reduce costs. I understand that S. 2034 is really designed to address the "easy" title transfers and not the more complicated projects that have a power component. Please describe how the authority created by S. 2034 would impact projects and facilities with project power. If a district has project power, would they be barred under S. 2034 from pursing a title transfer? I assume that such projects would still need Congressional authorization before such a title transfer could occur.

ANSWER: If a district has project power, they would not be barred under. S. 2034 from pursing a title transfer. The program created under S. 2034 creates a second track for pursuing title transfer from that which Reclamation already pursues. If S. 2034 were to become law, the track that Reclamation follows will be determined based upon the unique characteristics of the facilities and the legal and financial arrangements that exist. The inclusion of project power in some cases may add a level of complexity to the title transfer process, which may not be appropriate for the type of non-controversial title transfers envisioned in S. 2034.. Therefore, those transfers would continue through the same process as they do today, where Reclamation works with parties to develop a unique title transfer agreement and work with Congress to authorize that transfer. That is the same process as used today and it would continue to be available under this program.

18. **On S. 2034:** Can you please describe the current process by which reclamation projects or facilities are being transferred to non-Federal ownership? Also, please discuss the advantages and disadvantages, if any, associated with granting the BOR complete authority to execute such ownership transfers? Issues of interest include:
    c. Impacts of losing congressional oversight associated with the title transfer process;
    d. Impacts on Federal revenues; and
    e. Implications of increased non-Federal ownership of what previously were regarded as public assets.

ANSWER: The current process by which Reclamation facilities are transferred to non-federal ownership begins at the field level and requires Congressional authorization to complete. Reclamation has a set of standard procedures and processes for title transfers that are consistent across the organization. That process and the criteria that all Reclamation offices follow are articulated in the Framework for the Transfer of Title – Bureau of Reclamation Projects, which was originally developed in 1995 and was updated in 2004. The document is available to districts and any members of the public interested in learning about or pursuing a Reclamation title transfer. Since each project is unique – with their own specific legislative authorities, stakeholders and issues – Reclamation has learned that while the steps are all consistent, the structure of the title transfer agreement must be tailored to meet the unique circumstances and needs of the project or facilities in question. In response to the question of losing "Congressional oversight" of the title transfer process, it is important to point out that the legislation under consideration by the Committee is targeted at non-controversial projects, with requirements for criteria and determinations shared with the public, meant to ensure that any title transfer approved under the bill be consistent with all applicable laws, be in the financial interest of the United States, and have no significant opposition, among other requirements. That said, Reclamation does not foresee any immediately adverse implications for Congressional oversight, public participation, use of projects, or federal revenues associated with legislation as currently written.

FROM SENATOR RISCH

19. **On S. 2034:** If a water district has "project power" generation resources and hopes to pursue title transfer opportunities in the future, what clarifying process would an irrigation district follow in light of S. 2034, in pursuing a title transfer?

ANSWER: If a water district has project power and wishes to pursue a title transfer, that transfer would continue through the same process it would today if S. 2034 were enacted into law. The program created under S. 2034 creates a second track for pursuing title transfer from that which Reclamation already pursues. The track that Reclamation follows under S. 2034 would be determined based upon the unique characteristics of the facilities and the legal and financial arrangements that exist. The inclusion of project power may add a level of complexity to the title transfer process, which may not be appropriate for the type of non-controversial title transfers envisioned in S. 2034. Therefore, those transfers would continue through the same process as they do today, where we develop a unique title transfer agreement and work with Congress to authorize

that transfer. That is the same process as Reclamation uses today and it would continue to be available under this program.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 2 9 2014

The Honorable Don Young
Chairman
Subcommittee on Indian and Alaska Native Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman,

Enclosed are responses to follow-up questions from the legislative hearing held on February 5, 2014, on H.R. 3110, the Huna Tlinget Traditional Gull Egg Use Act. These responses were prepared by the National Park Service.

Thank you for giving us the opportunity to respond to you on these matters.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Colleen Hanabusa, Ranking Minority Member
Subcommittee on Indian and Alaska Native Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 2 9 2014

The Honorable Don Young
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Christopher P. Salotti
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Enclosure

cc: The Honorable Colleen Hanabusa, Ranking Minority Member
Subcommittee on Indian and Alaska Native Affairs

Questions for the Record for Stephanie Toothman, Associate Director, Cultural Resources, Partnerships and Science, National Park Service, Department of the Interior

United States House of Representatives
Committee on Natural Resources
Subcommittee on Indian and Alaska Native Affairs
Hearing on February 5, 2014

1.) You state that the Administration will support H.R. 3110 with two minor amendments. One of the amendments is to make clear that the Hoonah Indian Association's role is purely advisory as to the development of a harvest plan. Why is the National Park Service trying to limit the tribe's role in developing a plan?

As testimony was being prepared in 2011 on a previous version of this bill, the question of whether it is appropriate for the Hoonah Indian Association to share equal authority with the Secretary in preparing the harvest plan was raised. To ensure that there would be no question about this issue, we recommended that the Hoonah Indian Association's role be advisory.

We want to be clear that the harvest plan will be developed in consultation with the Hoonah Indian Association. The National Park Service (NPS) respects the importance of this traditional cultural activity and the NPS will accommodate the Hoonah Indian Association to the greatest extent possible while ensuring the sustainability of gull populations in the park.

2.) The National Park Service testified on a Senate companion bill earlier this year and requested similar amendments. While the Senate Energy Committee did amend the companion bill, S. 156, it did not amend it exactly as the Park Service had requested and does not make clear that the tribe's role is advisory. If these bills were to pass Congress, would the need for such minor amendment prevent the President from signing the bill into law?

While we believe the amendment we recommended would help clarify the role of the Hoonah Indian Association in developing the harvest plan, our support for the bill is not contingent on Congress adopting the amendment.

3.) Can you please describe the interaction between the Tribe and the National Park Service from the time when harvesting the gulls eggs was prohibited to the present? What I am getting at is, if harvesting these eggs is so important to the tribe, why did it take over 40 years for all parties to coalesce around a legislative solution?

Egg collection was curtailed in Glacier Bay in 1960 as both the Migratory Bird Treaty Act and NPS regulations prohibited the activity. In 1997, international treaties were amended to recognize certain customary and traditional migratory bird harvests in Alaska. That same year, the NPS worked with tribal officials and a council of elders who identified the need for legal access to gull eggs as the highest priority for the Huna Tlingit. That was followed in turn by P.L. 106-455 which directed the NPS to study gull egg collection. That study was completed and a Environmental Impact Statement was finished in 2010. Once legislation is enacted to authorize

gull egg collection, the NPS will work with the Hoonah Indian Association to carry out the law and provide for this important cultural activity.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 3 1 2014

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans
and Insular Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of Insular Affairs to the questions for the record submitted following the January 7, 2014, oversight hearing on the United States Government Accountability Office September 2013 Report – Compact of Free Association Micronesia and the Marshall Islands Continue to Face Challenges Measuring Progress and Ensuring Accountability.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Gregorio Kilili Camacho Sablan
Ranking Minority Member

Questions for the Record

Chairman John Fleming, M.D.

QUESTION 1. The 2014 President's budget request for OIA stated (on page 4) that the FSM and RMI remain generally stable due to funding through the Compacts. It goes on to say that 'without greater growth in their economies, neither government will be able to maintain the level of services to their populations in the medium term'.

- What is hindering economic development in the two countries?

  ANSWER: The primary constraints on economic development in both the FSM and RMI are their isolated locations and distances from markets, the lack of natural resources, the lack of access to capital and economies of scale, and their overall unaccommodating business climates. Considerable attention needs to be given by each government to identifying policy areas for reform, such as reducing the size and role of government in business activity, lowering barriers to trade, and liberalizing investment regulations, taxation, and markets. Attention must be given to the basic institutions that support the operation of markets, limited as they are, and the formation of private businesses.

- What economic opportunities are available to the RMI and FSM to replace U.S. grant funding?

  ANSWER: Economic opportunities available to both the FSM and RMI center upon expansion of the fisheries sector and to a much smaller extent, tourism. Even with significant growth within these two sectors, it is unrealistic to expect that such growth will generate revenue streams sufficient to replace United States grant assistance.

- What private sector growth, if any, is available to the region? What is necessary to develop it?

  ANSWER: Again, private sector growth will be centered upon fisheries and tourism. In order to further develop these sectors both the FSM and RMI need significant reforms for improving their business climates, removing their governments from commercial enterprises, opening up their economies to foreign investment, streamlining their regulatory and permitting processes, reforming taxation and land tenure policies, and ensuring that all businesses can compete on a level playing field.

QUESTION 2. What is the expected balance for the FSM and RMI trust funds by 2023? What level of annual funding will be available and for how many years?

ANSWER:

As of September 30, 2013, the total net asset values of the FSM and RMI trust funds were respectively $323.1 million and $206.2 million. The investment advisor for both funds has projected payouts as follows.

If the FSM trust fund manages an average 5% return annually from fiscal year 2013 through 2023, and assuming a 6% payout rate, the distribution from the estimated assets for fiscal year 2024 may possibly provide revenue equivalent to approximately 92% of the nominal sector grant level for 2023 without the partial inflation adjustment. As of fiscal year 2013, the FSM trust fund average annual rate of return is 4.9%.

For the RMI trust fund, the same analysis estimates, assuming a 6% payout rate, that if the RMI trust fund manages an average 5% return annually from fiscal year 2013 to 2023, the distribution from the estimated assets for fiscal year 2024 could possibly provide revenue equivalent to the estimated fiscal year 2023 sector grant level, partially inflation adjusted to fiscal year. As of fiscal year 2013, the RMI trust fund average annual rate of return is 5.7%.

- Part 2: What level of annual funding will be available and for how many years?

While the trust funds each maintain a diverse portfolio to maintain growth at reasonable risk levels, all such projections and estimates are subject to fluctuations in the market. As stated in the Trust Fund Agreement, the trust funds are established "to contribute to the long-term budgetary self-reliance" of the respective countries "with an ongoing source of revenue after Fiscal Year 2023." The FSM and RMI governments should not rely solely on the trust funds for budgetary assistance after compact funding terminates in 2023.

QUESTION 3. The GAO report mentioned that neither Micronesia nor Marshall Islands have submitted reports to the United States President as required in the Compacts. Does this need to be rectified? Do other reports submitted to the U.S. cover those reporting requirements?

ANSWER: Sections 214 and 215 of the amended Compacts of Free Association for the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), respectively, call on each government to report annually to the President of the United States on the use of United States sector grant assistance, other assistance, and progress toward mutually agreed program and economic goals. As noted in the GAO report, these annual reports have not been submitted.

Because the governments agreed, these reports should be submitted. Additionally, such reports would be a self-assessment of each government's program and economic goals and achievements. There are no other official communications to the United States that provide such comprehensive information in single documents.

The Office of Insular Affairs contracts with the Graduate School USA to create annual economic reviews of the FSM and RMI. These reports can serve as accurate assessments of the FSM's and RMI's overall economies, if not their specific goals. The annual single audit reports provide detail on the spending of Compact funds in both countries, but do not address program performance. Various other reports created by the two governments report on sector performance, but, as the GAO reports, the data are not generally reliable.

Congresswoman Colleen Hanabusa

QUESTION 4. Do you believe the expectations of the U.S. and FSM/RMI are aligned regarding the level and quality of health and education systems? In other words:

Does the DOI expect the RMI/FSM to deliver a health care system to meet US standards? If not, what standards? Is this fair and just? What are the social and development consequences of whatever system is built?

ANSWER: The Department of the Interior does not expect the FSM or RMI to deliver health care systems that meet United States standards. Interior's expectation is that improvements will be made in the delivery of preventive, curative and environmental care by both the FSM and the RMI in order to achieve results that are most appropriate for developing Pacific island nations. A continued focus will be placed upon the reduction of non-communicable diseases, the elimination of leprosy, and a reduction in diabetes-related hospitalizations in both countries.

The social and development consequences of "whatever system is built" is predicated upon the success of the FSM and RMI in developing community-based systems that emphasize prevention, primary care, mental health, and substance abuse prevention.

QUESTION: Does the US expect the RMI/FSM to deliver an education system to meet the quality metrics of the US? If not, what standards? Is this fair and just? What are the social and developmental consequences of whatever system is built?

ANSWER: The quality metrics of the United States education system are not appropriate for the FSM and RMI. The expectation of the Department of the Interior is that achievement levels of students in the primary and secondary education systems will be based upon performance standards and assessments most appropriate for developing Pacific island nations. The successful delivery of education services within both nations face enormous challenges that include geographic isolation of schools, largely unqualified classroom teachers, low levels of parental and community involvement, and inadequate school readiness of various age groups.

QUESTION 5. Do you feel that the RMI/FSM have the human and infrastructure capacity / resources to the adequately provide the required data reports, or handle the monitoring systems required by the DOI? If not, what needs to be done?

ANSWER: The FSM and RMI have been unable to demonstrate capacity to produce the performance and monitoring reports required under the Amended Compacts. The financial

resources available are certainly sufficient to address these requirements but have not been included by either government in their annual sector proposals.

The United States government is engaged with both countries on this issue and is currently exploring available options to best fulfill reporting requirements under the Amended Compacts.

QUESTION 6. It is my understanding that the original COFA agreement with Palau expired on September 30, 2009. What obligations on the part of the United States are still continuing?

ANSWER: The Compact of Free Association agreement, effective on October 1, 1994, does not have a termination date. Only the economic assistance provisions of the first fifteen years of the agreement expired on September 30, 2009.

The Compact requires a review, including the terms of economic assistance on the 15-year, 30-year, and 40-year anniversaries of its enactment. There is legislation pending to provide Palau additional financial assistance through 2024. Although the original assistance provision has expired and the new agreement is yet to be implemented, the United States has provided $13.1 million through annual appropriations for fiscal years 2010 through 2014.

All other obligations of the United States and Palau created by the Compact are continuing. These include security and defense obligations, the eligibility of Palauans to serve in the United States armed forces, and the right of Palauan citizens to nonimmigrant status in the United States for the purposes of education and employment.

QUESTION 7. During the hearing, both Mr. Paul and Mr. Takesy mentioned that they have tried to keep statistics as to where RMI and FSM citizens reside in the United States. Can you please share this data?

ANSWER: Under the Amended Compacts of Free Association, approved by the Congress in 2003, an enumeration of freely associated state (FAS) migrants to the United States jurisdiction of Hawaii, Guam, the CNMI, and American Samoa was to occur every five years. The third such enumeration by the U.S. Bureau of Census occurred in 2013 and shows the following results:

American Samoa	25	(x)
CNMI	2,660	(x)
Guam	17,170	(x)
Hawaii	14,700	+/–2,241

x – Not Applicable.

The 2003 and 2008 enumerations showed the following numbers:

	2003	2008
Guam	9,931	18,305
Hawaii	7,297	12,215
CNMI	3,570	2,100
American Samoa	10	15

QUESTION: Also, is it known how many citizens are employed and have their own health insurance?

ANSWER: The Department of the Interior does not collect information on the number of freely associated state citizens that are employed or the number who have their own health insurance.

QUESTION: What other costs are associated with U.S.-residing RMI and FSM citizens?

ANSWER: The affected jurisdictions of Hawaii, Guam, the CNMI, and American Samoa may submit reports outlining their costs, which they attribute to Compact migrants, and those reports are transmitted by the Department of the Interior to the Congress along with departmental comments. Typically, the reports do not include information on the benefits of such migration for the individual United States jurisdiction. The CNMI does not submit reports. Hawaii last submitted a report for fiscal year 2010. Guam submitted a new report in February 2014 for fiscal years 2004 - 2013. Past reports that have been sent to the Congress are available online at http://www.doi.gov/oia/reports/Compact-Impact-Reports.cfm.

QUESTION 8. Please explain more about the trust funds set up to provide for RMI and FSM after the compact expires. How was it set up?

ANSWER: Sections 215 and 216 of the Compact of Free Association with the Federated States of Micronesia and sections 216 and 217 of the Compact of Free Association with the Republic of the Marshall Islands, approved in United States public law, are the authority for the establishment of the trust funds. The two trust funds were established as non-profit corporate entities in Washington, D.C., and are governed by trust fund agreements negotiated prior to the effective dates of the Amended Compacts. Per the Trust Fund agreement, the purpose of the trust funds are to provide a source of revenue post 2023 when sector grant assistance terminates.

The trust funds were never intended to "provide for the RMI and FSM after the compact expires." They were established to provide a source of revenue for each country after 2023 when United States appropriations terminate; they were not to be the only source of revenue for each country. Certain funding will continue, such as Ebeye Special Needs for the RMI. This amount will continue as long as the MUORA remains in place between the US and RMI governments.

The US will maintain chairmanship of the Trust Fund Committee and the fiscal Procedures Agreement of the Amended Compact may continue to apply trust fund distributions to the RMI and FSM governments.

QUESTION: What are the future obligations on the part of the U.S.?

ANSWER: After 2023, the United States will continue to provide security and defense for the RMI and FSM, their citizens will continue to be eligible to serve in the armed forces of the United States and continue to be eligible to emigrate from their home countries to the United States, as nonimmigrants, for education and employment purposes. While the United States will no longer shoulder financial responsibilities, some United States officials will remain as members of the trust fund committees.

QUESTION: What role, if any, does JEMFAC and JEMCO have with the trust funds?

ANSWER: JEMFAC and JEMCO have no formal roles with regard to their country's respective trust funds. However, some members of the respective trust fund committees also participate in the deliberations of JEMFAC or JEMCO.

QUESTION 9. Are there any foreseeable impacts on Hawaii and the United States after the compact expires in 2023? Can states like Hawaii anticipate cost increases? And what will happen to compact impact funds that Guam, Hawaii, and CNMI currently receive?

ANSWER: It is difficult to forecast what any impacts might be in 2023 when current, direct assistance expires. As with Palau, none of the other provisions of the Compacts expire on that date, including the provision allowing entry into the United States.

The strongest incentive for FAS out-migration is economic opportunity. We can expect out-migration to continue unless the economies of the FAS grow at much faster rates. Where the immigrants go is another matter. Some observers believe that fewer FAS emigrants view Hawaii as their final destination and are moving to the mainland United States where the cost of living is lower.

Under current law, the annual $30 million in Compact impact funding, which is shared among Guam, CNMI, Hawaii and American Samoa based on their respective FAS populations, will cease after 2023.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 2 5 2014

The Honorable Jon Tester
Chairman
Senate Committee on Indian Affairs
Washington D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Assistant Secretary for Indian Affairs to questions submitted following the October 30, 2013, hearing before your Committee on federal recognition legislation.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: The Honorable John Barrasso
Ranking Member

From Senator Tester –

I understand that the Secretary of the Interior has asked you to consider Little Shell's request that the Department suspend its consideration of the Tribe's petition for federal acknowledgement pending the promulgation of the revised acknowledgement regulations.

- Will the revised acknowledgment regulations impact Little Shell's petition? If so, how?

  Response: The Department recently sent a letter to Little Shell accepting their request that we suspend consideration of the Secretary's referral until revisions to the Part 83 regulations are finalized. However, I do not know what the final regulations will entail. The Department did release a Redline Discussion Draft, which was intended to begin the discussion on how the Part 83 regulations might be revised. We received nearly 300 comments from various parties on the Discussion Draft, but I want to reiterate that that Draft was not a Proposed Rule. The Discussion Draft, and the ensuing comments, have been instrumental in getting us to the point where we are now – which is preparing to release a Proposed Rule and begin the next phase toward revising the Part 83 regulations.

  It is also very important that the Department not make any assumption on the content of the Final Rule. We must place our trust in the comprehensive consultation process and the notice and comment period for the Proposed Rule. In doing so, the Department is confident that the Final Rule will reflect many different views and concerns which is natural in the process of constructive agency rulemaking.

- Did the Little Shell petition for federal acknowledgement receive any negative comments to your knowledge?

  Response: In addition to over 10,000 pages of comments by the Little Shell on the proposed finding, the Department received comments from two third parties during the comment period. These two comments could be characterized as negative.

- If a tribe goes through the Part 83 process & gets a positive proposed finding and no negative comments, is there any reason why that tribe shouldn't be recognized immediately by Congress?

  Response: Congressional recognition is, of course, a separate process than the Part 83 process. As I know you are aware, Congress can act to recognize and Indian tribe wholly outside the Part 83 process. In general, we have no objection to Congress exercising its own authority to make recognition decisions.

The Part 83 process provides for a comment period on both positive and negative proposed findings. It provides also for further evaluation by the Department based on a more complete record for the final determination and provides for requests for reconsideration before the IBIA. In three cases, following IBIA review, positive final determinations were not sustained (Chinook, Pequot, Schaghticoke).

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 19 2014

The Honorable Jon Tester
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the Assistant Secretary – Indian Affairs to the questions for the record submitted following the September 10, 2013, legislative hearing on the following:

- S. 1448, to provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes;
- S. 1219, to authorize the Pechanga Band of Luiseno Mission Indians Water Rights Settlement, and for other purposes; and
- S. 1447, to make technical corrections to certain Native American water rights settlements in the State of New Mexico, and for other purposes.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable John Barrasso, Vice Chair
Committee on Indian Affairs

Questions for The Honorable Kevin Washburn, Assistant Secretary-Indian Affairs, U.S. Department of the Interior – September 10, 2013 Legislative Hearing

From Senator Udall –

1) Under the Administration's reading of the Settlement Act without the Technical Correction, has Congress in effect authorized Taos Pueblo to spend early money on new construction regardless of urgency, instead of on reconstruction of aging systems that are in urgent need?

Answer: The Department continues to review the range of eligible purposes the Taos Pueblo may utilize funding for from the Taos Pueblo Development Fund pursuant to Section 505(f). As I testified before this Committee, the Administration is committed to working with the Taos Pueblo and the bill's sponsors to determine what problems the Taos Pueblo needs to address. These discussions pertain in part to the eligible activities associated the $15 million in "early money", and these discussions remain ongoing.

2) In your testimony you [expressed] a desire to work further with the Taos Pueblo on the provisions in this bill defining the uses of the "early money" made available to the Pueblo for protection of the Buffalo Pasture and related projects.

It is my understanding that Article 8.6.1 of the Settlement Agreement provides that a goal of the settlement is for Taos Pueblo to "expand the exercise of its Historically Irrigated Anchorage Right to an amount at least sufficient to irrigate three thousand acres as of the Enforcement Date." In other words part of the purpose of this pre-Enforcement Date funding, or "Early Money" is to expand the Pueblo's irrigated acreage right to 3,000 acres.

It is also my understanding that some repairs to Taos Pueblo's traditional irrigation ditches are needed for the Pueblo to expand to 3,000 acres, and that some of those ditches in urgent need of repair on the south side of the Pueblo, where they cannot qualify for the other early money purpose of delivering water to the Pueblo's Buffalo Pasture wetland.

- Given this situation, isn't the use of early money for irrigation infrastructure repairs consistent with the Settlement Agreement?

- Would the Administration oppose a Technical Correction that allowed the Pueblo to do some of the most urgent irrigation ditch and potable water system repairs with a portion of the early money?

Answer: As I noted in the previous question, the Department continues to review the range of eligible purposes the Taos Pueblo may utilize funding for from the Taos Pueblo Development Fund pursuant to Section 505(f).

3) S 1447 corrects a typo in the original Navajo Water Settlement legislation which switched the allocations for survey and protection of archaeological resources with allocations for mitigation of fish and wildlife habitat destruction. S. 1447 returns these allocations to the standard 4% of

project funding can be used for protection of cultural resources and 2% for fish and wildlife facilities.

- Could you tell the committee the current status of archaeological work on the Navajo Gallup pipeline?

Answer: Archaeological work on the Navajo-Gallup Water Supply Project is nearing completion of initial National Historic Preservation Act Section 106 compliance inventory efforts in support of planning and design of pipeline reaches. As the final construction alignments are refined for individual reaches, cultural resource mitigation measures will be completed to allow construction to continue. Archaeological monitoring of construction activities is ongoing as Project work proceeds.

- Is the Bureau of Reclamation running up against their limited allocation of 2% of project funding?

Answer: While cultural resource expenditures to date are not approaching the currently authorized 2% allocation, some of the most expensive components of the cultural resources compliance program have yet to occur, namely the mitigation efforts that will be required. Decisions on the appropriate disposition of the potentially impacted sites will be driven, in part, by the amount of funding available for cultural resource work. Clarity on the amount of funding available for the cultural resource work will assist in this process and allow for better decisions that will respect Native American cultures and tribal values.

4) Section 4 of S 1447, the New Mexico Settlements Technical Corrections Act, would amend the Navajo Water Settlement to put the word "Project" before "water" in reference to the trigger of the 10 year clock for waiving of OM and R costs allocable to the Navajo Nation for any completed section of the project that are in excess of the ability of the Nation to pay. The intent of this change is to make clear that the 10 year period of OM and R assistance should not start until water associated with the project, or "Project Water" as referred to throughout the statute, is through the flowing completed portion of the project. It is my understanding that there is some possibility that non-project water, likely groundwater, could be used in portions of the pipeline project before full completion and before project water is delivered.

- In your opinion, is the simple clarification of "Project water" proposed in S 1447, sufficient to make clear the intent of the parties that the 10 years of OM and R assistance will only be triggered when project water, and not any other water, is delivered in a completed section?

Answer: Section 10603(b) of PL 111-11 defines Project water as water that is diverted from the Navajo Reservoir and the San Juan River. We believe that the simple clarification of "Project

water" as proposed in S 1447 is sufficient to define the intent that the 10 year waiver of OM&R assistance will begin when water diverted from the San Juan River, or Navajo Dam, is delivered to a completed section, and that the 10-year period would not be triggered when groundwater or any other non-Project water is delivered.

- Is there a need to insert a more clear definition of "Project Water"?

Answer: We believe that Section 10603(b) provides an adequate definition of "Project water".

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 19 2014

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
House of Representatives
Washington D.C. 20515

Dear Mr. Chairman:

Enclosed are responses to questions received by the Department of the Interior following the July 17, 2013, hearing before the House Natural Resources Committee on the Department's programs and policies. We apologize for the delay in providing you with these responses.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

Questions from Rep. Lamborn

1. In reviewing permits, the U.S. Fish and Wildlife duplicate the efforts of state agencies. Shouldn't Federal Fish and Wildlife avoid duplication and waste of taxpayer resources by delegating permit review to state agencies? State Fish and Wildlife agencies are in the best position to understand what is appropriate for their state.

Response: The U.S. Fish and Wildlife Service's permit issuance and review is carried out in accordance with federal laws and therefore in most cases cannot be delegated to states. The FWS works closely with local, state, and federal government partners to ensure that review processes are conducted in a timely manner, making the best use of taxpayer resources. The Department agrees that it is important to seek ways to increase efficiencies, including by institutionalizing best practices and strengthening collaboration with local and state stakeholders, as well as tribes.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. DeFazio

Drilling Safety

2. Secretary Jewell, in February 2012, the House natural Resources Committee Democratic staff released a report that examined safety and environmental violations that occurred relating to oil and gas drilling on federal lands over a decade beginning in the late 1990s. The report indicated that significant and potentially dangerous activities were occurring on federal lands without consistent or adequate federal oversight and enforcement. Since this report was issued what policies has the Department put in place to strengthen the inspection, oversight and enforcement program for onshore oil and gas activities?

Response: The Bureau of Land Management places a high priority on the oil and gas Inspection and Enforcement program. In July 2012, the BLM issued policy and guidance requiring additional oversight of the inspection and enforcement program. The BLM's Fiscal Year 2013 oil and gas inspection and enforcement strategy uses a risk-based system that identifies high priority drilling wells for technical inspection. In addition, the BLM is drafting comprehensive replacement regulations for Onshore Oil and Gas Orders 3 (site security), and 4 (oil measurement). The replacement regulations will update the minimum operating requirements as consistent with current law, technologies, and industry best management practices. Additionally the BLM is preparing a new Onshore Oil and Gas Order 9 (waste prevention) to establish standards to minimize the amount of venting and flaring of natural gas that takes place on oil and gas production facilities on federal and Indian lands. The BLM is also updating internal automation technologies, increasing the effectiveness and efficiency of inspection staff. In addition, the BLM is drafting a final rule regulating hydraulic fracturing that will establish a baseline standard for safety and environmental protection across all federal and Indian trust lands throughout the country.

3. Secretary Jewell, the report indicated that monetary penalties for safety violations were almost never issued, and when they were issued, they were issued inconsistently and amounted to very little. Over the thirteen year period evaluated in the report the average fine was only $135 per violation for an industry where the top 5 companies made $119 billion last year. That is not a real deterrent for these companies.

The fines that BLM can levy on oil and gas companies who violate regulations are set by a 30 year old law that has not been updated. The Interior Department and the American Petroleum Institute have both agreed that these low fines are not a sufficient financial deterrent for companies who violate the law. Former BLM Director Bob Abbey agreed that fine amounts are too low, and former Secretary Salazar committed to reviewing and evaluating ways the Department could increase the dollar amounts of fines. Do you agree

that these fines are too low and has the DOI instituted any changes to provide additional deterrents for bad behavior?

Response: The BLM shares your concern over safety violations. The BLM has demonstrated a commitment to levy major fines for non-compliance. For example, in April 2011 the BLM announced the largest civil penalty settlement in the bureau's history, a $2.1 million settlement by Berry Petroleum Company that resolved a proposed civil penalty the BLM had issued in July 2009. BLM is also always looking for opportunities to enhance accountability and make greater use of best management practices. While the dollar amount of civil penalties is set under the Federal Oil and Gas Royalty Management Act and, thus, any change would require amendment to that law, the BLM plans to evaluate increasing the dollar amount of assessments under its regulations and expanding the categories of violations that result in automatic assessments.

Fracking Rule

4. Secretary Jewell, isn't it true that there is currently a wide variety in the stringency and efficacy of state regulations with respect to drilling or hydraulic fracturing on state lands? For example:

Wyoming requires pre-fracking disclosures of all hydraulic fracturing chemicals, no other state requires pre-frack disclosure of everything (some states have more limited disclosure requirements).

Colorado and West Virginia require advanced notice of fracking to landowners and/or residents, no other state has this requirement.

Wyoming has strong rules for surface casing setting depth and protecting drinking water and Texas has good rules for intermediate and production casing cementing. Other states do not have these prescriptive requirements. Furthermore, the existence of these requirements hasn't hindered oil and gas development in CO and TX.

Colorado and New Mexico have tight restrictions on the use of wastewater pits, New York has proposed rules require that all flowback be collected in tanks rather than pits. Other states do not have these requirements.

Despite the claims of the Majority, isn't it true that the revised draft proposed BLM hydraulic fracturing rule would not be a duplicative layer of regulation but would rather be implemented by individual state BLM offices in a way that dovetails with existing state standards not on top of them?

Response: The BLM's proposed regulations are expected to integrate with existing state standards for hydraulic fracturing by establishing consistent standards for wellbore integrity, chemical disclosure, and flowback fluid management on public lands. While certain states have an established regulatory framework addressing hydraulic fracturing, a number of states with federal oil and gas leases do not. The revised proposed rule would allow for variances to allow the use of an alternative standard, technology, or process that meets or exceeds the hydraulic fracturing rule's protections of the public's resources and lands, but variances are not necessary in many of the situations where a state's regulation meets or exceeds standards in the hydraulic fracturing rule. If an operator, through compliance with state rules, is automatically meeting the requirements of the hydraulic fracturing rule, no variance is necessary. BLM is coordinating with the appropriate state regulatory agencies to minimize duplication and redundancy in the regulatory processes and to provide clarity to the industry.

5. Secretary Jewell, the discrepancies in state standards are why a federal standard, to act as a floor, is needed. But the revised draft rule BLM recently issued is weaker in a number of important ways that the draft rule issued last year. For example:

In the revised draft rule, cement evaluations don't have to be submitted until after the well is fracked (vs before in the last rule).

In the revised draft rule, operators don't have to provide BLM with information (depth, volume of fluids, chemicals, water source, size of fracturing) about each well and instead can just use one packet of generic information to be submitted for all "similar wells"

In the revised draft rule, disclosure of fracking chemicals would not have to be disclosed until after a well is drilled and could be done using the website Frac Focus, which, while it is undergoing changes, remains a database not run by the federal government that has been criticized for preventing easy access, aggregation, and download of data.

The waiver provisions (called variances) have been expanded to allow entire areas or states to be exempt from some requirements.

I am concerned that despite the fact that a number of Democratic Members wrote to then-Secretary Salazar calling for the initial draft rule to be strengthened, the revised draft rule appears to have been weakened in these critical ways. I would hope that as you continue to work through this rulemaking process you incorporate suggestions of Members of t his Committee and the public to strengthen the rule to protect public health and the environment.

Response: The Department and the BLM have made clear that it is important that the public has confidence that the right safety and environmental protections are in place. The revised

proposed rule will modernize BLM's management of hydraulic fracturing operations and help to establish baseline environmental safeguards for these operations across all public and Indian lands.

BLM believes that the post-fracturing disclosures and certifications contained in the revised proposal would provide adequate assurances that fracking operations protect public health and safety and protect federal and Indian resources, and will ensure that the public is informed about the specifics of the actual fracking operations which are ultimately performed.

The BLM proposed for comment that where the cement evaluation log (CEL) data for a "type well" shows no indications of cement problems, the operator could construct the other wells in an approved group within the same field using the same well design and construction without getting prior approval for the other wells. However, the operator would be required -- for all wells -- to monitor and record the flowrate, density, and treating pressure, when cementing well casings and to submit a cement operation monitoring report to the BLM. The required monitoring data would provide important indications of problems with the cementing of casings and would help to verify the results of a CEL and for wells where no CEL is required and will provide the primary assurance that cementing operations conformed to those of a proven type well. If the monitoring information provides indications of an inadequate cement job, the operator would also be required to notify the BLM within 24 hours, submit a written report within 48 hours, and to certify that the inadequate cement job had been corrected and that usable water zone isolation had been achieved prior to starting hydraulic fracturing operations.

The BLM took comment on all aspects of the rule including whether this approach is sufficient to determine adequate cementing to protect usable water aquifers.

Regarding the use of FracFocus, BLM recognized and understood that FracFocus is in the process of improving the database with enhanced search capabilities to allow for easier reporting of information when including submission of data through this system. Moreover, information submitted to the BLM through FracFocus will still be required to comply with this federal rule, including its requirements that the operator must certify the information submitted is correct. For operators and the public, FracFocus provides a consistent venue that allows for ease of reporting and accessing data.

Finally, as noted in the question, the revised proposed rule would allow the BLM to approve a variance that would apply to all lands within a field, a basin, a state or within Indian lands and that would be based on the BLM's determination that it will meet or exceed the objectives of the regulation. The variance process would allow the BLM to work with states or tribes to appropriately adapt the regulatory requirements to the unique geology of an area or defer to a standard, technology, or process required or allowed by state or tribal government, as long as

application of the standard, technology, or process meets or exceeds the objectives of the hydraulic fracturing rule. The BLM would issue the variance in cooperation with the state or tribe. The variance would apply only to the requirements of the hydraulic fracturing regulations, and all requirements of the Mineral Leasing Act, or the Mineral Leasing Act for Acquired Lands, other federal statutes and all other regulations, would continue to apply to all lessees and operators.

Mining Reform

6. As you know, the Mining Law of 1872 – a law signed into law by President Ulysses S. Grant – allows free hardrock mining on federal public lands.

Oil and gas companies have to pay the American taxpayers a royalty when extracting oil and gas from federal lands. Coal companies have to pay a royalty when mining coal on federal lands. But if you are mining for gold, silver, copper, uranium and other valuable hardrock minerals – you pay nothing.

Of course, states, tribal nations, and private landowners aren't foolish enough to give away their hardrock minerals for free – they all charge a royalty – some as high as 12 percent.

We also have the issue of abandoned hardrock mines. According to the GAO there are more than 160,000 abandoned mines in the West alone – some estimates put that toal as high as 500,--- mines and each can cost tens of millions of dollars to clean up.

Secretary Jewell, would your department support – and will you commit to working with this committee on – real mining reform that includes royalties as a source of income for the U.S. Treasury and abandoned mine reclamation?

Response: Yes, the Department looks forwarding to working with the Congress on reform of the mining law. The Administration supports legislative efforts to address the problem of abandoned hardrock mine lands, and has proposed creating a program similar to that for coal mines for abandoned hardrock sites. The Administration also supports efforts to provide a fair return to the taxpayer from hardrock production on federal lands, and has proposed developing a leasing program under the Mineral Leasing Act of 1920 for certain hardrock minerals including gold, silver, lead, zinc, copper, uranium, and molybdenum, currently covered by the General Mining Law of 1872.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Oil and Gas Development

7. The Majority has brought a number of bills to the floor to require new oil and gas leases on lands under your jurisdiction. These efforts have included bills to require leasing off the West Coast, Atlantic Coast, and in sensitive areas like Bristol Bay – home of the most productive salmon fishery on the planet.

But the truth is that a substantial portion of federal lands – both onshore and offshore – are already under lease for oil and gas development. As I mentioned in my opening statement, there are currently 25 million acres onshore and 30 million acres offshore – for a total of 55 million acres – already under lease that are not producing a drop of oil and gas.

Would your department and President Obama support legislative action to incentivize the development of existing oil and gas leases? In other words, do you believe we should be pushing the industry to use what it already has – 55 million acres – or giving them access to more access to federal land?

Response: Yes. The Administration has proposed legislative reforms to bolster and backstop administrative actions being taken to reform the management of Interior's onshore and offshore oil and gas programs, with a key focus on improving the return to taxpayers from the sale of these federal resources. This includes proposals to encourage the diligent development of oil and gas leases (e.g., requirements for shorter primary lease terms, stricter enforcement of lease terms, and monetary incentives to get leases into production).

Pebble Mine

8. As you know, a Canadian mining corporation is proposing to develop "Pebble Mine," which would be the largest open pit gold-copper mine in North America in the headwaters of two of the most critical wild salmon producing drainages in the world that help support a $2 billion per year sustainable fishery.

Although the Department of the Interior is not directly involved in the approval process of the proposed mining operation, I would strongly encourage you to engage with the EPA and to get involved in this issue. The sheer size of the mine has implications for BLM holdings along the potentially impacted rivers and tributaries of the region as well as the fish and wildlife – like moose, caribou, ducks, geese, and other migratory birds.

And, if the native salmon populations are impacted you potentially have repercussions for the many wildlife species in the food change that salmon support. If you haven't already, I

would encourage you to have a conversation with Gina McCarthy – if and when the Senate does its job and confirms her – and stay active on this issue.

Response: This is an important issue for the Department. While the proposed development is on land owned and managed by the State of Alaska and the watershed assessment is being carried out by the Environmental Protection Agency, the assessment does include some lands managed by Departmental agencies. As such, the Department and its agencies will continue to monitor the process closely.

Public Lands/Wilderness

9. In 2011 DOI issued a report highlighting 18 backcountry areas deserving congressional protection as Conservation Lands or Wilderness, including two of my bills in Oregon – the Rogue Wilderness Area Expansion Act and Devil's Staircase Wilderness Act.

At that time, former Secretary Salazar noted the local and bipartisan support for these proposals and challenged the 112th Congress to pass them, stressing the importance of balancing land conservation with energy development. Unfortunately, not a single one of these bills passed either the House or the Senate – the first time Congress failed to protect a single acre of wilderness in seven decades.

The Obama Administration has been under pressure from the Majority over its use of the Antiquities Act. But I assume the President would much prefer to sign bipartisan conservation bills – passed by Congress – into law instead of using the Antiquities Act as the sole means available in the last two years to preserve and protect sensitive areas and landscapes.

Response: The Administration has testified in support of both the Devil's Staircase and Rogue Wilderness Expansion Acts, and we encourage the Congress to move these bills forward. The Administration is committed to engaging local citizens and getting public input; to understanding how communities feel; and to connecting with local communities in an effective way so that local sentiments about these spectacular places inform decisions about recognizing American treasures. The monument designations the President has made under Antiquities Act authority have followed this community-based approach. It is also worth noting that the Antiquities Act has been used by 16 presidents, from both parties, to recognize the importance of such areas as the Grand Canyon and the Statue of Liberty.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Endangered Species

10. I am concerned about the Fish and Wildlife Service's proposal to delist the gray wolf from the Endangered Species list throughout the United States. Before the proposal was released, I organized a letter signed by more than 50 of my House colleagues to Service Director Dan Ashe urging him to keep protections for wolves in place as they continue to rebound. The lack of sound scientific evidence to support the Service's claim that the wolf is recovered, even though it only exists in a small portion of its historic range, indicates that a decision has been made to shift the goalposts and declare a victory. What are you doing to review this decision? Will you require the Service to produce additional scientific evidence to prove that wolves no longer warrant protection under the ESA?

Response: The Fish and Wildlife Service evaluated the classification status of gray wolves currently listed in the contiguous United States and Mexico under the Endangered Species Act. Based on that evaluation, and consistent with the ESA, the FWS published two proposed rules on June 13, 2013, to remove the gray wolf from the List of Threatened and Endangered Wildlife but to maintain endangered status for the Mexican wolf by listing it as a subspecies. These actions are proposed because the best available scientific and commercial information indicates that the currently listed entity is not a valid species under the ESA and that the Mexican wolf is an endangered subspecies.

On September 30, 2013, the FWS announced that it has reinitiated a scientific peer review process to obtain an independent and objective peer review of the science behind the proposal. The peer review process will be sponsored and conducted by the National Center for Ecological Analysis and Synthesis, a respected interdisciplinary research center at the University of California – Santa Barbara. The center will vet prospective reviewers to verify that they are able to provide an objective review and have no conflict of interest, culminating in the selection of 5 or 6 well-qualified scientists with professional qualifications and relevant experience.

The Department recognizes the significant public interest in this issue and is focused on ensuring that all interested parties have the opportunity to provide comments concerning the proposed rule. With that in mind, FWS extended the public comment period on the proposed rule for a second time. In addition, to provide a forum for additional stakeholder input, the FWS also held five public hearings on the proposal, including in Sacramento, CA, Denver, CO, Albuquerque, NM, Pinetop, AZ, and Washington, DC.

Additional details of the proposed rules and public hearings, and links to submit comments to the public record can be found here: www.fws.gov/graywolfrecovery062013.html.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Hanabusa

11. Madame Secretary, since 2009 Indian country's highest legislative priority has been passage of a legislative fix to the Carcieri v. Salazar decision. I introduced bipartisan legislation in the House this year that would provide a clean fix to that misguided decision.

a. It has been suggested that a clean Carcieri fix is impossible, due to concerns related to so-called "off reservation" gaming. Does the Administration continue to support a clean Carcieri fix – that is, restoring Secretarial authority to place land into trust for any federally recognized Indian tribe, regardless of when that tribe was federally recognized?

Response: A *Carcieri* fix is a top priority for the Administration. The Department believes that this decision frustrates the U.S.'s trust responsibility to Indian tribes by hindering the Department's ability to take land into trust for some tribes. The President's 2014 Budget included language that, if enacted, would resolve the issue. The Department stands ready to assist Congress in passing legislation to fix the decision.

b. What administrative measures has the Department taken to ensure that tribal homelands are restored pending Congressional action?

Response: Despite the *Carcieri* decision, which has placed unnecessary and substantial administrative burdens on the Department and tribes and has significantly increased litigation risks, the Department over the last four years has processed more than 1,100 separate applications and acquired over 205,000 acres of land in trust on behalf of Indian tribes and individuals.

The Department is also currently engaged in both federal court and administrative litigation regarding the Secretary's authority to acquire land in trust pursuant to the Indian Reorganization Act of 1934 following the *Carcieri* decision.

c. What steps has the Administration taken or proposed to take in order to work with Congress on passing a clean fix in the 113th Congress?

Response: The Administration continues to support a legislative solution to address the negative impacts and increased burdens on the Department and on Indian Country resulting from this decision. The President included in the Administration's Fiscal Year 2014 Budget language that, if enacted, would resolve this issue.

12. Last month, President Obama signed an executive order establishing the White House Council on Native American Affairs, furthering this Administration's already firm

commitment to greater engagement and collaboration with Indian tribes. The National Congress of American Indians lauded the establishment of the Council, which you will chair as Secretary of the Interior.

a. The executive order establishing the Counsel states that the Council "shall improve coordination of federal programs and the use of resources available to tribal communities." As Council chair, how do you intend to achieve this purpose? What specific goals would you like to see achieved?

Response: The Executive Order, signed by President Obama on June 26, is further evidence of this Administration's commitment to advancing self-determination. As noted in the question, the intent is to improve interagency coordination, efficiency, and expand efforts to leverage federal programs and resources available to tribal communities.

The Council will convene at least three times a year and will work collaboratively toward advancing five priorities that mirror the issues tribal leaders have raised during previous White House Tribal Nations Conferences, including promoting sustainable economic development; supporting greater access to and control over healthcare; supporting the efforts to improve the effectiveness and efficiency of tribal justice systems; expanding and improving educational opportunities for Native American youth; and protecting and supporting the sustainable management of Native lands, environments, and natural resources. The Council will establish inter-agency subgroups that will focus on leveraging and aligning federal resources and updating and making regulatory processes more efficient. Specific goals for each area will be developed and generated by the relevant subgroup. For example, the Departments of Education and Interior have established a federal Study Group to improve the effectiveness of Indian education in Bureau of Indian Education schools. Among other things, the Study Group is focusing on streamlining processes for BIE schools and proposing structural improvements which impact the delivery of education services.

b. How could Council recommendations impact reservation-level conditions, such as greater access to and control over tribal nutrition and healthcare and tribal justice systems, as well as protecting tribal lands, environments and natural resources?

Response: As noted in the testimony for this hearing, the Council will include more than 30 federal departments and agencies and will work across governments and executive departments, agencies, and offices to develop policy recommendations and expand efforts to leverage federal programs and resources available to tribal communities. The goal is that the Council, through this improved coordination and use of resources will focus on key activities, such as promoting sustainable economic development; supporting greater access to and control over healthcare; improving the effectiveness and efficiency of tribal justice systems; expanding and improving

educational opportunities for Native American youth; and protecting and supporting the sustainable management of Native lands, environments, and natural resources, will have a positive impact on issues of importance to tribes.

13. This Committee has received extensive testimony on the important distinction between federally-owned public lands and Indian country held in trust by the federal government. The recently revised BLM regulations on hydraulic fracturing now allow for a "variance" that enables tribes to be the relevant authority in hydraulic fracturing decisions, after a showing that the tribal regulations are at least as stringent as federal standards.

a. Does this inclusion in the regulation stem from outreach from the tribes? Have you received feedback on this specific provision from tribes? Do you think that this provision adequately distinguishes tribal lands from public lands and respects tribal sovereignty?

Response: The variance provision in the BLM's proposed hydraulic fracturing rule was informed by tribal consultations. The BLM contacted over 180 tribal governing bodies and had significant exchanges with over 30 tribes in multiple states during the drafting of the rule. The BLM fully embraces the statutes, Executive Orders, and other statements of governmental or departmental policy in favor of promoting tribal self-determination and control of resources. The Indian Mineral Leasing Act, however, subjects all oil and gas operations on trust or restricted Indian lands to the Secretary's regulations and does not authorize the Secretary to allow tribes to opt out of regulatory oversight. This rule applies to Indian lands so that these lands and communities receive the same level of protection provided on public lands.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Grijalva

14. The New York Times recently repoared that one of the poorest tribes in the country, the Oglala Sioux Tribe of the Pine Ridge Indian reservation, is ending its low income housing program due to sequestration cuts even though over 1500 tribal families are in need of and awaiting basic housing on the reservation. The tribe is cutting back on Headstart, healthcare and programs for the elderly. Ninety (90) percent of the tribe's annual budget is comprised federal funds, so the mandatory cuts due to sequestration are indeed devastating to this tribe. But this is just one example of many real stories about sequestration's impacts on the First Americans

When you hear about Oglala and other tribes struggling to survive sequestration, do you believe that this administration is doing everything in its power to fulfill the fiduciary obligations it has to tribal nations? Furthermore, what steps are you and this administration going to take to address the increasing cuts in the country's already poorest areas, including tribal reservations?

Response: Poor communities often suffer worse when tightening the fiscal belt. The sequestration's impacts are indiscriminate as applied under the law. Indian Country already experiences needs that exceed the ability to meet them, and these communities are arguably the least equipped to absorb the losses sequestration is imposing. At the Department we are trying to prioritize and find a way forward. President Obama also signed Executive Order 13647 in June establishing the White House Council on Native American Affairs, which will be chaired by the Secretary of the Interior and will include more than 30 federal departments and agencies.

The Council will work across governments and executive departments, agencies, and offices to develop policy recommendations and expand efforts to leverage federal programs and resources available to tribal communities. The goal is that the Council, through this improved coordination and use of resources will focus on key activities, such as promoting sustainable economic development; supporting greater access to and control over healthcare; improving the effectiveness and efficiency of tribal justice systems; expanding and improving educational opportunities for Native American youth; and protecting and supporting the sustainable management of Native lands, environments, and natural resources, will have a positive impact on issues of importance to tribes.

15. The Department of the Interior is one several federal agencies that entered into an MOU with the Advisory Council on Historic Preservation to improve the protection of and tribal access to Indian sacred sites through enhanced interagency coordination. What role is the DOI taking in order to enforce the goals of this MOU? Beyond this MOU, what

steps, if any, are being taken by this administration to support tribal nations in their efforts to protect and preserve their sacred sites and objects?

Response: The Departments of the Interior, Energy, Defense, and Agriculture, and the Advisory Council on Historic Preservation entered into a Memorandum of Understanding on November 30, 2012. This action was in response to tribal requests to improve the protection of and tribal access to Indian sacred sites through improved interdepartmental coordination and collaboration. Implementation of the MOU is through a three-tiered group approach: an interagency executive group, a core group of interagency staff coordinating work, and five subgroups of subject-matter experts that work on different aspects of implementing the MOU. During the first two years of this MOU, the Department of the Interior is the chair of both the core working group and the subgroup working on confidentiality standards for sacred sites.

The agencies are working together on strategies for sacred sites protection, including the creation of: a training program for federal staff; guidance for best practices, a public outreach plan, and recommendations for the confidentiality of and tribal access to sacred sites. The agencies are also working to establish mechanisms for the collaborative stewardship of sacred sites with tribes; identifying impediments and making recommendations to address the protection of sacred sites; and building tribal capacity. This interagency effort is being accomplished using the existing resources within each of the agencies.

16. Tribal consultation is a major component in the relationship between tribal nations and the federal government. What steps is this administration taking in order to uphold their responsibility in consulting with tribes for any federal, state, and corporate initiatives that will impact tribes and their homelands which may extend beyond reservation borders?

Response: This Administration has taken its responsibility to ensure consultation with Indian tribal governments on policies that have tribal implications seriously. Early in the Administration, the President signed a Presidential Memorandum on tribal consultation that made the importance of meaningful and regular consultation clear and directed agencies to submit a plan for implementing the policies and directives contained in Executive Order 13175, on Consultation and Coordination with Indian Tribal Governments.

The Department's official consultation policy was announced in December 2011, and it was developed in close coordination with tribal leaders. It sets out detailed requirements and guidelines for Interior officials and managers to follow to ensure they are using the best practices and most innovative methods to achieve meaningful consultation with tribes. And, as indicated in a previous response, in June the President signed Executive Order 13647, establishing the White House Council on Native American Affairs, which will be chaired by the Secretary of the Interior. The intent of the Council is to improve interagency coordination, efficiency, and

expand efforts to leverage federal programs and resources available to tribal communities. In signing the Executive Order, the President noted that greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Gosar

17. Grand Canyon Air Tours

The one year anniversary of the passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21, P.L. 112-141), recently passed. Senator McCain and I have inquired several times about the delay in the implementation of the law as it pertains to the quiet technology incentive requirements of the Act. As of March of this year, we were told that the National Park Service and the FAA were still working to identify options to implement these incentives. I believe a year is more than enough time. Coming from the private sector, I am sure you would not have stood for this type of delay. I know I wouldn't have in my dental practice.

Can you please tell me when my colleagues and I can expect to hear from the NPS and the FAA that the incentives are ready for implementation? We have been very patient but our patience is running thin. These incentives are critical to the long term economic health of Northern Arizona and Southern Nevada.

Response: Effective January 1, 2014, the NPS has implemented air tour fee adjustments as an initial incentive for operators conducting air tours at Grand Canyon National Park to convert to the use of quiet technology aircraft. These fee adjustments will also be made available to air tour operators who already have converted to the use of quiet technology aircraft. The FAA plans to announce a second incentive that would release FAA held allocations for the use of quiet technology aircraft in time for the busy part of 2014 tourist season. The NPS and FAA are continuing to work together on additional incentives that will require noise analysis to ensure compliance with the mandate set forth in MAP-21 that the impact of increased operations resulting from the incentives does not increase noise at Grand Canyon National Park.

18. Long-Term Experimental and Management Plan (LTEMP) for Glen Canyon Dam

My question is about the Long-Term Experimental and Management Plan (LTEMP) for Glen Canyon Dam that is being undertaken by the Bureau of Reclamation and the National Park Service as co-lead agencies.

My understanding is that Reclamation currently has ten years of NEPA compliance for Glen Canyon operations – from two Environmental Assessments and Findings of No Significant Impact issued just last year. Given this, and given that the endangered humpback chub population in the Grand Canyon is continuing to increase and currently exceeds recovery goal requirements ....why is the Department proceeding with another EIS at this time?

Response: The 2012 Environmental Assessments and associated Findings of No Significant Impact focused on specific aspects of the operations of Glen Canyon Dam, including high flow experiments and nonnative fish management through 2020. In contrast, the Long Term Experimental and Management Plan Environmental Impact Statement (LTEMP) announced by the Secretary in December 2009 will update a 1996 Record of Decision and considers potential modification of many aspects of Glen Canyon Dam operations beyond those considered in the 2012 Environmental Assessments. The LTEMP will incorporate scientific information developed by the Glen Canyon Dam Adaptive Management Program. The resulting Record of Decision from the LTEMP will allow the Secretary to meet statutory responsibilities for protecting and improving Glen Canyon National Recreation Area and Grand Canyon National Park resources and values, as well as statutory responsibilities under the Law of the River and the Endangered Species Act.

The President's budget contains $3.5 million for the Glen Canyon Dam LTEMP EIS. Given today's fiscal struggles, why would Interior spend $3.5 M on an EIS that basically is unnecessary since 1) BOR has NEPA compliance for the next 10 years; 2) USFWS has issued a fresh biological opinion showing current Glen Canyon operations are not jeopardizing the endangered Humpback Chub?

Response: As noted in the response to the previous question, the LTEMP EIS is a separate process focused on a different aspect of Glen Canyon Dam operations.

19. National Monument Designations via Antiquities Act authority in Arizona

I want to quickly ask about National Monuments. While I am not opposed to monuments, I firmly believe any designation should go through a public process and ultimately be codified by Congress.

I have introduced legislation, the Arizona Land Sovereignty Act, which would ensure a public process for monument designations. I know there are groups in my state urging the department to declare parts of my district as monuments. Does the Administration have any plans or are you considering any proposals to designate a National Monument in Arizona, under Antiquities Act authority?

Response: At a hearing in June 2013, the Administration strongly opposed efforts to weaken Antiquities Act authority, which has been used by 16 presidents from both parties to recognize the importance of such areas as the Grand Canyon and the Statue of Liberty. While there are no current plans to designate monuments in Arizona under this authority, it is worth noting that this Administration is committed to engaging local citizens and getting public input; to understanding how communities feel; and to connecting with local communities in an effective way so that local sentiments about these spectacular places inform decisions about recognizing American

treasures. The monument designations the President has made under Antiquities Act authority have followed this community-based approach.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Napolitano

20. Madam Secretary, last week the House passed its version of the Energy and Water Appropriations. As you know, the legislation guts the WaterSMART program by 53%, including the elimination of all funding for WaterSMART grants. These grants have helped conserve over 600,000 acre-feet in the past three years.

a. Where does the money go?

b. Why is WaterSMART a priority for the department, and what would the cuts, if enacted, mean to program?

Response to a. and b.: As competition for water resources grows for crop irrigation, growing cities and communities, energy production, and the environment, the need for information and tools to aid water resource and land managers grows. WaterSMART is a Department of the Interior initiative that leverages and directs existing expertise and resources within the USGS and the Bureau of Reclamation towards addressing complex, national and regional-scale water challenges. WaterSMART uses scientific and financial tools to promote collaborative efforts to help balance water supply and demand. Specific examples of projects under the WaterSmart grant program include the installation of injection wells to facilitate groundwater recharge, lining of irrigation canals to reduce seepage, replacement of open ditches with closed pipes to reduce seepage and evaporation, installation of water meters, installation of energy efficient water pumps, and the installation of high-efficiency water delivery products. Completed WaterSMART grant projects, along with other conservation activities, are saving an estimated 616,000 acre-feet per year – enough water for more than 2.4 million people – and our current goal is to save 790,000 acre-feet per year by the end of 2014.

Over the last three years, the WaterSMART program has enabled the Department to act aggressively in response to near term and immediate water shortages and apply scientific findings to plan for longer term needs. Funded at $35.4 million, WaterSMART promotes sustainable solutions and economic productivity in the western United States. It addresses current and future water shortages; degraded water quality; increased demands for water from growing populations and energy needs; amplified recognition of environmental water requirements; and the potential for decreased water supply availability due to drought and climate change.

Cuts of that magnitude would significantly hinder actions under the WaterSMART program that could help address water supply shortages in the Colorado River Basin and elsewhere, and would undermine the government's ability to partner with local communities on improving resilience against climate-related impacts that threaten a range of economic and environmental interests.

21. The Natural Resources Committee is the authorizing committee for the Department of the Interior. As part of the Energy and Water Debate, programs and authorizations that were vetted by House and enacted into law are now being defunded by the appropriators despite being requested by the Administration.

a. Energy and Water zeros out funding for Indian Water Rights Settlements. Why is it important that we prioritize Indian Water Rights Settlements?

Response: Water settlements secure tribal water rights helping to fulfill the United States' promise to tribes that Indian reservations will provide Indian people with permanent homelands. Indian water rights settlements are also consistent with the general federal trust responsibility to American Indians and with federal policy promoting Indian self-determination and economic self-sufficiency. The certainty that Indian water settlements provide is, in the words of the Western Governors Association, "a crucial element of effective water supply planning and management in the West." Achieving certainty through negotiated settlement is far superior to decades of expensive and disruptive litigation. Congress has agreed with tribes, states and non-Indian water users about the value of Indian water rights settlements by enacting 23 settlements spanning a period of over 30 years.

b. What would be the effects of zeroing out the San Joaquin "Settlement"?

Response: The Settlement's two primary goals are to restore and maintain fish populations and restore and avoid adverse water impacts. Eliminating funding for the Settlement creates an uncertain future for more than just river restoration but also for traditional water delivery operations from Friant Dam and the San Joaquin River. The Settlement effectively ended 18 years of litigation associated with water deliveries from the San Joaquin River, and if funding is eliminated the parties to the Settlement could be encouraged to return to court to pursue other avenues that could disrupt the underlying long-term goals of restoring the San Joaquin River according to the processes and timelines spelled out in the Settlement.

c. What do these cuts mean for Reclamation's traditional construction budget, which majority claims to support?

Response: The elimination of funding for the Indian Water Rights Settlements and the San Joaquin Settlement would jeopardize ongoing construction activities, including the construction of seepage mitigation projects on the San Joaquin River or the construction of water supply projects to Tribes who have settled long-standing disputes through negotiated settlement.

22. As part of the sequestration, several of USGS's streamgages have been discontinued. Why is it important that we support the streamgage system?

Response: Streamgages are critical and vital for meeting federal responsibilities associated with forecasting floods, tracking flows in major river basins, and assessing long-term climatic, land-use, and human impacts on streamflow and water quality. Increasing the number of streamgages is a high priority for the USGS. We look forward to working with you to explore possibilities for restoring recently discontinued USGS streamgages throughout the nation and to take steps to help make the network more stable so that water-resource managers have the streamflow information they need to make informed decisions.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. McClintock

23. Madam Secretary, you may be aware that FWS recently proposed a rule for Categorical Exemption from NEPA mandates regarding "Injurious Wildlife Listings" under the Lacey Act. This Committee understands well the challenges in dealing with invasive species, however, I am concerned that exempting the FWS from addressing the environmental, economic and social impacts of proposed additions to the list could be extremely damaging to small business; as several of the species FWS seems to be targeting are widely traded and would have a significant economic impact. I'd like your commitment to look into this matter and get back to me before the service finalizes their rule making on this issue. Do I have that commitment?

Response: A final determination on this proposed rule will be made once the public comments received are analyzed and addressed. Regardless of whether or not a categorical exclusion is finalized and applied to the listing of injurious wildlife under the Lacey Act, the Fish and Wildlife Service will continue to carry out the analysis required under the National Environmental Policy Act and other laws applicable to federal regulatory action, including the Lacey Act itself, the Administrative Procedures Act, the Regulatory Flexibility Act, and Executive Order 12866, Regulatory Planning and Review. These laws account for much of the analyses made when carrying out the regulatory listing process.

The proposed categorical exclusion would give FWS the flexibility to forego the preparation of an Environmental Assessment under NEPA when, absent extraordinary circumstances, listing a species as injurious under the Lacey Act. The proposed categorical exclusion meets the Council on Environmental Quality guidelines, which provide that a categorical exclusion may apply to actions that are administrative and repetitive in nature and for which Environmental Assessments continually result in "Findings of No Significant Impact."

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Lowenthal

24. How can and will the BLM guarantee that FracFocus and all of its current and historic data will exist in perpetuity if it is a private website?

Response: The Bureau of Land Management's revised hydraulic fracturing rule would require operators to disclose the chemicals used in the fracturing process and provide that information to the BLM after the fracturing operation is completed. Operators may submit this information to the BLM through FracFocus, which is already used by some states for reporting mandatory chemical disclosure of hydraulic fracturing chemicals as a single reporting location. FracFocus was initiated as a project with the Department of Energy and managed by the Ground Water Protection Council and Interstate Oil and Gas Compact Commission. It was endorsed in the Secretary of Energy Advisory Board 90-day report of best practices. Use of this website allows an operator to provide the information to the BLM, as well as the public and state and tribal regulators. This approach also has the benefit of reducing reporting burdens for oil and gas operators by avoiding duplicative reporting requirements and administrative duties for the BLM in many instances. The data submitted to FracFocus is managed by the Ground Water Protection Council (GWPC) and in partnership with the Interstate Oil and Gas Compact Commission; the data is provided to the BLM and other regulators on a regular basis, and BLM would also maintain permanent possession of a set of this data.

25. How can the BLM ensure that FracFocus has all of the proper data search, sort, and aggregation tools – which we have heard from other witnesses before this committee it still does not have, thus making it nearly impossible to effectively use?

Response: The FracFocus website was launched in April 2011 by the GWPC, a private nonprofit organization governed by state drilling and water quality officials. As states have expanded requirements for disclosure, FracFocus has evolved into a standardized, easily accessible repository of public information. FracFocus 2.0 was recently released with the added data search capability from a XML database platform. Users have the option of using the GIS mapping technology to identify chemicals used in the wells, as well as search and develop reports by date ranges, chemical names or Chemical Abstract Service numbers. The BLM will continue to work with GWPC to improve the FracFocus website to meet the expectations of the final BLM hydraulic fracturing rule.

26. BLM's Revised Draft Rule ambiguously states, "The BLM understands that the [FracFocus] database is in the process of being improved and will in the near future have enhanced search capabilities and allow for easier reporting of information." The BLM's draft rule specifically references FracFocus as an acceptable compliance repository of data for oil and gas operators. What does it mean for the BLM to "understand" that FracFocus

will provide additional tools? Has FracFocus provided written commitment to BLM to do so much? If so, please provide this documentation to the committee. Does the BLM have any recourse if FracFocus does not do what BLM "understands" that it will do?

Response: The BLM's proposed regulation (§3162.3-3(i)) requires submission of the data through FracFocus or another database specified by the BLM. The GWPC has a successful track record in development of similar risk-based data management systems reliably used by the U.S. Environmental Protection Agency, the Department of Energy, and other state agencies. FracFocus 2.0 was developed with a number of additional tools, such as dashboard access for individual users and configuration module for XML file download. The BLM has met on numerous occasions with the GWPC regarding FracFocus, and will continue meeting with the GWPC in the future as the final rule is being completed.

27. What is the oversight process for ensuring that operators are using the trade secret exception to chemical disclosure properly? In other words, what is the cross-check verification of whether these chemicals are in fact trade secrets? Will there be an internal BLM verification that those chemicals are in fact trade secrets? And will Congress and the public be excluded from providing oversight to the trade secret process? Please explain how the BLM and the public will not be relying on the world of operators without verification of the legitimacy of operators' trade secret exception claims? Do you think the BLM's broadening of the trade secret exception may erode the public's confidence and trust in hydraulic fracturing?

Response: The BLM must follow the Trade Secrets Act (TSA). Although operators may have their own list of chemicals that could fall under the TSA, the BLM would have the authority to validate the trade secret determinations. The BLM can issue a notice to the operator and move forward with the disclosure of the chemicals considered invalid for protection under the TSA if the operator does not appeal such a decision within 10 days of receipt of the notice.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Sablan

28. As you are aware, the United States and the Republic of Palau signed an agreement on September 10, 2010, to extend the financial terms of the Compact of Free Association between our two nations until 2024. Since then, there has been little success in securing ratification of the agreement by Congress, largely due to the inability to find a suitable offset. After a recent visit to Washington by newly elected Palau President Tommy Remengesau, you joined Secretary of Defense Chuck Hagel, and Secretary of State John Kerry in sending a letter to Senate President Joe Biden and House Speaker John Boehner in support of the ratification of the Compact Review Agreement. In the letter, you and your fellow cabinet members pointed out that "approving the results of the Agreement is of import to the national security of the United States, to our bilateral relationship with Palau, and to our broader strategic interests in the Asia-Pacific region." Madam Secretary, what update can you give us regarding your department's efforts to secure passage of the Palau agreement?

Response: As noted in the question, approving the results of the Agreement is of critical importance to the national security of the United States, to our bilateral relationship with Palau, and to our broader strategic interests in the Asia Pacific region. As such, the Administration transmitted legislation to Congress that would approve the Agreement and has worked with the Committee to try to identify appropriate offsets for funding the Agreement. The Administration stands ready to work with Congress to approve this critically important piece of legislation.

29. I commend DOI on its ongoing development of a 15-year Management Plan for the Marianas Trench Marine National Monument, which was established by then-President Bush in 2009. Please explain what other proposals your agency intends to take or is currently undertaking to support the monument?

Response: The U.S. Fish and Wildlife Service manages the Marianas Trench Marine National Monument, including the Trench Unit and the Volcanic Unit, as National Wildlife Refuges under Secretarial Order 3284, dated January 16, 2009. Management activities include convening the Marianas Trench Monument Advisory Committee, consulting with the National Marine Fisheries Service on their responsibilities for fisheries-related issues, and coordinating with the Commonwealth of the Northern Mariana Islands on monument planning. On an operational basis, the Service fulfills its primary management responsibility by issuing special use permits that allow scientists and explorers like James Cameron's historic expedition to the trench. The FWS routinely consults and coordinates with the National Oceanic and Atmospheric Administration, the Commonwealth of the Northern Mariana Island, the U.S. Coast Guard, the Department of Defense, and the Friends of the Trench.

30. In January 2012, President Obama signed an Executive Order and announced new initiatives to significantly increase travel and tourism in the U.S. Back in October 2011, the Department of the Interior released a 50-state report outlining some of the country's most promising ways to reconnect Americans to the natural world. Unfortunately, the U.S. territories were left out. And then DOI rolled out the improved Recreation.gov website and the website did not include treasures such as the American Memorial Park managed by the National Park Service or the Marianas Trench National Monument Volcanic and Trench units managed by the U.S. Fish and Wildlife Service. However, your staff worked with our office for months to update the website to reflect these areas. I am asking for your commitment to include the U.S. Territories when applicable in all reports, promotions, etc. This will complement the President's initiatives to increase travel and tourism in every state and territory.

Response: The Administration is committed to the empowerment and economic growth of US-affiliated insular communities, and will include the U.S. Territories in this material where appropriate.

31. The illegal international trade in timber and wildlife has skyrocketed in recent years, and has been linked to organized crime syndicates and terrorist groups. While the Lacey Act has proven successful in keeping these criminal elements out of the United States, forests and wildlife in other countries are being decimated. Will you work with other federal agencies, foreign governments, and the conservation community to fight illegal trafficking of wildlife and timber?

Response: In addition to being one of the lead federal agencies enforcing the Lacey Act, the FWS works closely with the other land managing agencies within the Department that enforce the Lacey Act across hundreds of millions of acres of public and tribal lands, as well as with other Departments and foreign governments. The FWS also enforces many other U.S. laws that protect wildlife, including the Endangered Species Act, the Marine Mammal Protection Act, and the Migratory Bird Treaty Act. The FWS will continue to work with its partners to ensure the success of the Lacey Act.

In July of this year, President Obama signed Executive Order 13648 on Combating Wildlife Trafficking that establishes a cabinet-level Task Force, led by the Attorney General and the Secretaries of State and Interior. Under the terms of that Executive Order, the Administration is developing a comprehensive program to work with African nations to combat wildlife poaching; prioritizing the targeting and prosecution of international syndicates engaged in illegal trafficking of wildlife for sale in consumer countries; and working with receiving countries to stop the transshipment and sale of ivory and other illegal wildlife parts. The Task Force is in the process of developing a National Strategy to address this problem. The first meeting of the

Advisory Council on Wildlife Trafficking, which will make recommendations to the task force, was held December 16, 2013.

32. From the brown tree snake on Guam and the Mariana Islands, to pythons in the everglades, to Asian carp in the Mississippi River, invasive species cost the United States over $120 billion a year. What are your thoughts on the severity of our problems with invasive species, and how will you work to minimize the damage they cause? What additional tools do you need?

Response: Invasive species impact the Department's mission and purposes for which we manage public lands and their resources in myriad ways, including the services these lands offer, such as recreation, hydropower, water supplies, agriculture, and ranching. They also impact ecosystem functions including pollination, water filtration, climate stability, pest control, and erosion protection, wildfires, and other natural hazards. The environmental, economic, and social impacts of invasive species and their control or eradication can be costly, controversial, and complex. Prevention of their introduction, establishment, and spread is the most cost effective and least disruptive approach to managing the threats these species pose to the nation's public trust resources.

The Department is working to more effectively address the threat of invasive species through preventative and management efforts, including an ongoing effort to improve the efficiency and effectiveness of regulations and regulatory processes used to implement our existing authorities to address invasive species. We are developing an MOU with several key industry and state partners that will lead to voluntary actions to better manage the risks associated with harmful non-native species. And we are continuing to improve our ability to detect, assess, and control key invasive species through research and environmental modeling. The Department has also forged strong partnerships with local, state, tribal, and other federal agencies in order to manage invasive species impacts on the resources it manages. The Department's efforts have resulted in tangible improvements in water quality, species recovery, habitat restoration, and overall invasive species management in ecosystems.

Addressing invasive species is a high priority for the Department. With limited resources, it is critically important that invasive species prevention and control efforts be coordinated and prioritized. We look forward to working with Congress and other stakeholders and partners to tackle the significant problems that invasive species cause.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Wittman

33. Do you see any inherent conflict between the development of the five-year OCS leasing plan as mandated by the OCS Lands Act and the National Ocean Policy (NOP) and its call for regions to develop marine spatial plans that you as Secretary are subsequently bound to follow per the Executive Order establishing National Ocean Policy? What impact would NOP have on permitted activities like energy development?

Response: Neither the National Ocean Policy nor marine planning creates or changes existing regulations or statutory authorities under which the Department's bureaus operate. The final Implementation Plan for the NOP was developed with extensive stakeholder input and gives states and communities greater input in federal decisions, among other things. The Implementation Plan supports voluntary regional marine planning, which will bring together ocean users to share information to plan how we use, sustain and better understand our ocean resources.

34. Do you support the goal of wetland restoration and would you support continued authorization of the North American Wetlands Conservation Act?

Response: The Department supports the goal of wetland restoration and reauthorization of the North American Wetlands Conservation Act. The Department testified in strong support of H.R. 2208, the North American Wetlands Conservation Extension Act, at a hearing before the House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, on August 2, 2013. The Department also supports legislation to increase the price of the Federal Duck Stamp, funding from which is also critical to protecting wetlands that offer breeding, feeding, and resting areas for migratory waterfowl.

35. In June the Wildlife and Hunting Heritage Conservation Council (WHHCC) federal advisory council sent a letter to you asking for the creation of a dedicated spot for hunting and recreational shooting on the Bureau of Land Management Resource Advisory Councils (RACs). What is your position on providing sportsmen with this opportunity to have a dedicated voice in policy decision impact federal lands?

Response: The Bureau of Land Management takes seriously the work of the Resource Advisory Councils, which provide an opportunity for individuals from a wide-range of backgrounds and interests to have a voice in the management of public lands. Under BLM regulations, each RAC must include balanced representation of the following three broad categories: Commercial/commodity interests; Environmental/historical groups (including wild horse and burro and dispersed recreation); and state and local government, Indian tribes, and the public at

large. Hunting and recreational shooting interests may be represented in any of the three categories (as noted on the RAC application):

- Category 1: Developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;
- Category 2: Dispersed recreation interests
- Category 3: Public at large

One-third of RAC member positions become open each year, generally between January and March. The BLM's senior management will continue to consider changes to categories or the addition of special subcategories for interests like hunting and shooting sports. The Department recognizes that sportsmen and women care deeply about the public lands and we encourage them to apply for RAC appointments.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Young

36. As you know, the State of Alaska recently submitted a very comprehensive Exploration Plan and Special Use Permit Application to the Department pursuant to Section 1002(e) of the Alaska National Interest Lands Conservation Act or "ANILCA." Section 1002(e) is very clear on what must happen when such a plan is submitted, including a requirement that the Secretary of the Interior "shall promptly publish notice of the application and the text of the plan in the Federal Register and newspapers of general circulation in the State." When do you anticipate publishing this notice?

37. Section 1002(e) also states that "the Secretary shall hold at least one public hearing in the State for purposes of receiving the comments and views of the public on the plan." When do you anticipate holding such a hearing (or hearings)?

Response to 36 and 37: Based on long-standing legal interpretation, FWS has found that the underlying statute and its 1983-84 implementing regulations bar the Service from considering the exploration plan and permit application.

38. In June 2013, during a speech, former Deputy Secretary, David Hayes, announced that the Interior Department will soon be asking the general public to identify areas that should and should not be open to oil and gas leasing. While listening and receiving feedback from the public is important, without access to extensive data and teams of biologists, geophysicists, engineers, and geologists, what level of importance will be placed on an individual's suggestions in determining where is most appropriate for oil and gas leasing? Can you provide more information regarding this change in policy?

Response: The Department, as steward of our public lands and waters and through rigorous dialogue with stakeholders, must strike the right balance of meeting the interests of local communities and public owners of the resources as the President's "all of the above" energy strategy is advanced. The Department's management actions will continue to be developed and implemented in accordance with applicable law and regulations and supported by the best available science.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Bordallo

39. Given the current fiscal climate, priorities need to be made. In general, where do you place invasive species prevention and mitigation in your list of priorities? Specifically, the brown tree snake is responsible for many bird extinctions, loss of pollinating bats and increased power outages on our island. In response, the Refuge has installed the Multispecies Barrier Fence to keep out them out of 125 acres of the refuge. Unfortunately, with only six full time refuge staff we cannot do any intensive invasive species removal inside the fence. The refuge's Comprehensive Conservation Plan entails removal of the brown tree snake and eventual reintroduction of our birds. Do you foresee continued funding and support for brown tree snake mitigation?

Response: Addressing invasive species is a high priority for the Department. The Department's FY 2014 Budget Request sought an overall increase of about $23 million for invasive species prevention, management, control, and coordination. The USGS requested an increase of $500,000 to address the highest priority needs for control and management of brown tree snake, including research on the development of landscape scale methods to suppress or eradicate snakes on Guam and to detect and eradicate incipient populations of snakes accidentally transported to other islands such as Hawaii and the Northern Mariana Islands.

While the budget request reduces FWS's invasive species control and management funding by $507,000, the FWS will dedicate a small portion of Aquatic Invasive Species funding to continue to support the program. We intend to continue to provide funding for this effort, but priorities have shifted with growing concerns about the spread of continental aquatic invasive species, such as Asian carp.

The FWS also continues to work closely with the U.S. Department of Agriculture's Wildlife Services' brown tree snake program on Guam. Since its implementation, the rate of snake captures associated with cargo shipped to Hawaii has declined dramatically. The growth in United States military presence on Guam is causing increased air and sea traffic between Guam and other regions in the Pacific, including the continental United States. As a result, the Department of Defense's responsibility for brown tree snake control and interdiction at military and commercial facilities related to the military build-up on Guam was a component of a recently completed ESA Section 7 consultation with the FWS.

40. Guam is a beautiful island for both residents and our many tourists. It is also strategically important for the U.S. military. Recently, the Interior announced the Sentinel Landscape Partnership, a Public-Private collaboration aimed at preserving agricultural lands, assisting military readiness and protecting wildlife habitat. I believe Guam may be a

prime candidate for the program and am very interested in seeing how the pilot program fares at Base Lewis-McChord. Is this integrated approach something we may see more of from the Interior and what is the timeline for expansion of the program?

Response: This pilot program is a great example of coordination and collaboration between federal and local governments while showing how Farm Bill programs help support agriculture, rural America, the environment and national defense. Military readiness and wildlife habitat protection can go hand-in-hand with interagency, local government and private collaboration. The Sentinel Landscapes pilot will preserve the land's natural character and permanently protect critical habitat for declining species that could be listed under the Endangered Species Act, which is important for national defense, local economies and the conservation of natural resources. The goal is to restore and permanently protect critical habitat for three species that are proposed for listing under the Endangered Species Act, protect private and agricultural lands from development, and enable DoD's training mission to continue. The partnership holds great promise. The Department, DoD, and Department of Agriculture signed a memorandum of understanding late last year to expand the program, and DoD is already looking at potential next locations. The Department and USDA have committed to providing their input to determine which places will meet the program's three goals: providing important buffers for our military's operations, keeping working farms and ranches economically strong, and conserving wildlife and their habitats.

41. In Guam, the U.S. War in the Pacific National Historical Park houses some of our most beautiful places but more importantly it commemorates the WWII battles held in the Pacific Theatre. In response to sequestration there have been hiring freezes and program cutbacks. Like you mentioned in your statement and in addressing a similar question by Congresswoman Tsongas, these are unsustainable actions. If we do not solve the whole of sequestration will we be looking at permanent closure of some of our National Parks and refuges?

Response: The sequester was designed to be inflexible, damaging, and indiscriminate, and it was. Although the 2014 Consolidated Appropriations Act revised some of the sequestration cuts, the Department continues to face challenges across our bureaus to deal with the impacts of the sequestration. Our parks and refuges are special places, and deferring important work cannot be continued in future years without further severe consequences to our mission.

42. The budget also affects the maintenance and improvement of our refuge. The roads in the refuge are in deplorable condition with potholes so extensive that traffic has moved to the dirt shoulder. The refuge has yet to be connected to an outside source of water and operations are dependent on roof rainwater collection and trucking in water during the dry

season. Needless to say, visitation has decrease by 10% due to these factors. How will the Interior keep up with maintenance of the current parks and refuges?

Response: We have to balance addressing the most urgent needs, including for recreation; species and habitat conservation; and preservation of landscapes and historic and cultural resources with addressing the deferred maintenance backlog. The NPS is prioritizing capital investment funding to address its most important assets, such as mission-critical infrastructure and historic buildings and is removing non-essential assets, which reduces the number of structures that contribute to the backlog. The FWS is continuing to refine its condition assessment process, using maintenance action teams, actively pursuing local partnerships, carefully prioritizing budgets, and disposing of unneeded assets.

43. On Guam, there is already increased pressure on our resources due to global climate change. Steps need to be taken to both address the causes of climate change and prepare for climate change impacts. The refuge recently connected an 84 solar panel array to the grid to both offset the 40% rise in electric rates this fall and to help decrease carbon emissions. I commend you for your commitment to massive renewable energy projects in Nevada and Arizona but global climate change is a problem for everyone. What plans does the Interior have to expand its alternative energy infrastructure in more local settings to decrease our carbon footprint? Does the Interior have plans to seek partnerships either public or private to accomplish this goal?

Response: Interior is working broadly to implement energy efficiency and renewable energy at all levels. On Guam, the Office of Insular Affairs (OIA) and National Renewable Energy Laboratory (NREL) assisted the Guam Energy Task Force in developing a strategic energy plan that sets a goal of reducing Guam's dependence on fossil fuels by 20% by the year 2020 ("20x20 goal"). With continued funding from OIA and with the support of NREL staff, the Guam Energy Task Force recently completed an energy action plan that identifies near-term strategies that will likely have the greatest impact on reducing Guam's fossil fuel energy consumption. Through a partnership with the NREL, the Department is supporting the design, development, and ultimate deployment of small-scale, modular, renewable energy/diesel hybrid systems that harness local renewable energy resources and will reduce dependence on expensive diesel fuel in remote communities around the world.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Cramer

44. Secretary Jewell, as you know, the development of oil and gas is important for our energy security and high standard of living, not just in North Dakota, but the entire nation. Many of my constituents are justifiably concerned about the Interior Department's actions relating to the greater sage grouse, which would affect more than 800 square miles in three southwestern counties in North Dakota. I am greatly concerned about the Bureau of Land Management amending resource management plans to include "priority habitat areas" in resource management plans, which have a statutory responsibility to ensure multiple use activities, including mining, grazing, energy development, and agriculture. I understand that the BLM has already delayed or cancelled many projects tin several western states as a result of this process. Can you assure me that your Department will follow its multiple-use mandates under the Federal Land Policy and Management Act and the Multiple-Use and Sustained Yield Act with regard to sage grouse under other ESA activities?

Response: The Department and the Bureau of Land Management are fully committed to sustainably managing public lands for multiple uses both now and in the future. The Federal Land Policy and Management Act of 1976 defines multiple-use as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." Conservation of fish and wildlife habitat are important uses for which the Bureau of Land Management manages the public lands, as are mining, grazing, energy development, and many other uses. The land use planning process helps us determine the best use of resources on a local level.

The BLM, the U.S. Fish and Wildlife Service, and the U.S. Forest Service are currently working through the unprecedented task of amending resource management plans in several western states to identify and incorporate appropriate conservation measures to conserve, enhance, and restore greater sage-grouse habitat by reducing, eliminating, or minimizing threats to habitat. In North Dakota, the BLM is working in close cooperation with the North Dakota Game and Fish Department in developing the draft Environmental Impact Statement covering sage-grouse population areas within the state. The goals of this effort are to provide better protections for greater sage-grouse while continuing to support the use of public lands for mineral extraction, recreation, and other uses.

45. Secretary Jewell, within the Endangered Species Act "The Secretary may exclude any area from critical habitat if he determines that the benefits from such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." In making a determination to exclude certain areas as critical habitat will you give

considerable weight to not only private landowner interests, but the interests of individuals and employees of industries utilizing our nation's vast resources? Will you take this ability to exclude certain areas seriously?

Response: Under the Endangered Species Act, the FWS and the National Oceanic Atmospheric Administration's Fisheries Service designate critical habitat for each listed species; these are areas that are needed for the species' conservation and recovery. Critical habitat does not create a refuge nor necessarily restrict development. It only affects federal lands or lands where there is a federal nexus such as the issuance of a permit or federal funding. Along with the benefits to listed species, the Services must also consider the economic impacts, the impacts on national security, and other relevant potential impacts in making designations of critical habitat. Probable economic impacts resulting from the designation of critical habitat are assessed in an economic analysis.

On August 28, 2013, the Services published a final rule to revise the regulations implementing the ESA so that a draft economic analysis of the probable impacts of a critical habitat designation is completed and made available for public comment at the same time the critical habitat proposal itself is published. Publishing a proposed critical habitat rule and making available the associated economic analysis at the same time means that public stakeholders will have more information at the time they are reviewing critical habitat proposals.

Under the new regulations, a summary of each economic analysis will be published in the Federal Register along with the proposed critical habitat designation, while the analysis itself will be made available on the Web (www.regulations.gov and other appropriate venues). The final rule also codifies standard Services' practices for assessing the likely impacts of proposed critical habitat designations.

The Services are also planning to publish a proposal in the near future that will provide more clarity on the process for excluding lands from critical habitat designation. We recognize that understanding this process is important for the public, and we will request public input on the proposal. This proposal represents one important part of our efforts to improve the implementation of the ESA.

46. Secretary Jewell, on June 13, 2013, the Fish & Wildlife Service issued a Federal Register notice proposing to de-list (remove from the Endangered Species Act list) the gray wolf in most areas of the United States, an action I agree with – and I want to confirm you stand by this action. Do you? I understand this rule is expected to be finalized in September, correct? If the Fish & Wildlife Service is sued by environmentalists, will you defend the agency's actions on this delisting?

Draft Response: The actions that were published in June 2013 – to remove the gray wolf from the List of Threatened and Endangered Wildlife but to maintain endangered status for the Mexican wolf by listing it as a subspecies – were proposed because the best available scientific and commercial information indicates that the currently listed entity is not a valid species under the ESA and that the Mexican wolf is an endangered subspecies.

The Department is committed to ensuring that the public is well informed about the agency's actions related to the gray wolf and has the opportunity to provide comments regarding the proposed rule. On September 30, 2013, the FWS announced that it has reinitiated a scientific peer review process to obtain an independent and objective peer review of the science behind the proposal. The peer review process will be sponsored and conducted by the National Center for Ecological Analysis and Synthesis, a respected interdisciplinary research center at the University of California – Santa Barbara. The center will vet prospective reviewers to verify that they are able to provide an objective review and have no conflict of interest, culminating in the selection of 5 or 6 well-qualified scientists with professional qualifications and relevant experience.

Because of the significant public interest in this issue, it is important to ensure that all interested parties have the opportunity to provide comments concerning the proposed rule. With that in mind, FWS extended the public comment period on the proposed rule for a second time. In addition, to provide a forum for additional stakeholder input, the FWS also held five public hearings on the proposal, including in Denver, CO, Albuquerque, NM, Pinetop, AZ, and Washington, DC.

47. On April 2, 2013, OSM Director Joe Pizarchik responded to a letter from Chairman Hastings stating that since 2009 OSM has spent approximately $8.6 million in developing a new stream buffer zone rule. The 2008 rule that has yet to be implemented took five years to complete, including 40,000 public comments, two proposed rules, and 5,000 pages of environmental analysis from 5 different agencies. Is such a comprehensive rewrite of OSM regulations justified or warranted at this time?

Response: While the Surface Mining Control and Reclamation Act of 1977 has resulted in significant improvements in contemporary mining, recent studies have substantiated that adverse environmental impacts continue in certain situations long after mine reclamation has been completed. Streams have been adversely affected biologically from continuing water-quality discharges from reclaimed mines. In some cases, streams have been dewatered due to underground mining activities. Forest lands that sustain water quality and habitat have been fragmented or lost. Therefore, the Department, through the Office of Surface Mining Reclamation and Enforcement, has undertaken this rulemaking initiative, which is using the best science to modernize the bureau's rules in order to better protect streams from adverse effects of surface coal mining. OSM is currently developing a Draft Environmental Impact Statement for

the rule that will analyze alternatives to address the impacts of burying and mining through streams, including the protection of aquatic communities in streams located on, adjacent to, and downstream from coal mining operations. The draft will also analyze alternatives to provide for the restoration of native forests eliminated during future mining. Finally, it will consider alternatives to further enhance restoration of mined lands to their approximate original contour in accordance with SMCRA.

48. The 2008 stream buffer rule has never been implemented nationwide since OSM agreed to rewrite the rule as part of a settlement agreement. A legal challenge to OSM's existing rule was recently reinstituted. Do you plan to defend OSM's existing rule against legal challenge, or allow anti-coal groups to "sue and settle" the case as they did in 2010?

Response: The Federal government has filed motions for summary judgment in this litigation (*National Parks Conservation Ass'n v. Jewell* and *Coal River Mountain Watch et al. v. Jewell*), requesting, among other things, that the court vacate the 2008 Stream Buffer Zone Rule, reinstate the prior regulations, and remand the matter for further rulemaking because the defendants confessed legal error in failing to conduct consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.

49. In BLM's proposed rule governing the use of hydraulic fracturing on public lands, trade secret information can be withheld from disclosure rather than being submitted to BLM. However, the rule requires operators to make trade secret claims and provide the required justification for those claims. The rule even indicates that one of the tests for determining whether something is a trade secret is whether the disclosure of the information would harm the operator's competitive position. In fact, isn't it true that typically it is the service companies actually performing a hydraulic fracturing job that would hold the trade secret information, rather than the operators? Why did the BLM choose not to give service companies or other trade secret holders the opportunity to make and support their own claims? Does the BLM care about harm to a service company's competitive position? States like Colorado, upon which BLM based its rule, allow service companies to make and substantiate their own trade secret claims.

Response: The BLM holds the operator as the responsible party for any of the oil and gas operations and activities approved and permitted by the BLM in its name. The personnel and service companies that the operator chooses for their operation have to meet the same conditions of the permit. The operator as the permitted party is responsible to fulfill the terms of the permit, but may claim trade secret protection on behalf of its suppliers and subcontractors, assuming that the information constitutes a trade secret.

50. In its cost-benefit analysis for the hydraulic fracturing rule, BLM estimates the likelihood of an incident resulting from a fracturing operation is 0.03 percent for a major incident and 2.70 percent for a minor incident. BLM does not indicate what it considers to be "major" or "minor" incidents. Would you be able to clarify in order to help us to determine whether these estimates are consistent with the findings of other organizations, such as the Groundwater Protection Council and the American Petroleum Institute that have also studied the environmental risks from fracturing operations?

Response: The BLM used those figures to illustrate the likelihood of possible risks associated with hydraulic fracturing. The BLM reviewed an Energy Institute survey of violations that occurred on shale wells and tight sands and shales in Louisiana, Michigan, New Mexico, and Texas. According to the BLM, data in the Energy Institute survey do not distinguish between minor versus major impacts across the hydraulic fracturing risks that the BLM's rule is intended to address. Nonetheless, the BLM looked at the violations classified as surface spills of fracturing fluids, casing and cementing, fracturing, groundwater contamination complaints, and characterized them as minor or major incidents. For purposes of the BLM rule, a major incident means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. A minor incident means noncompliance which does not rise to the level of a major violation. The agency will continue to examine impacts cited by other groups, including the Groundwater Protection Council and the American Petroleum Institute.

Questions for Secretary Jewell
House Natural Resource Committee
July 17, 2013

Questions from Rep. Daines

51. Sage Grouse and Resource Management Plans:

As you know, Montana is heavily reliant on our resource management pretty heavily – for economic development, including for resource extraction, and outdoor recreation and tourism. I share your vision that these two goals (resource development and outdoor recreation) can co-exist. Another vital piece component of land management in Montana is local involvement. Land management decisions are best made right at home in Montana instead of here in Washington.

As you know, recently, the Bureau of Land Management issued three Resource Management Plans for public comment. The comment periods for these plans – Billings, Miles City, and the Hi-Line – were short. Both of our Montana Senators and I requested an extension of the comment period, as well as many of our constituents, due to the serious implications for resource management outlined in the RMPs, especially on Greater Sage Grouse conservation planning, outlined in the RMPs. Much of the proposed boundaries for priority concern and the Bureau's restrictions on activities in these areas have potential to impact the livelihoods of many Montanans. We're learning development is projected to increase and bring more economic benefits to our communities and grazing continues to be a central part of life throughout proposed Greater Sage Grouse habitat. Conserving this species is a high priority for our state and local communities. They have a lot to say about it and have much to contribute to your Department's planning process.

On May 22, 2013, I sent my a letter to you requesting a 120 day extension on the comment period for the Billings-Pompeys Pillar, Hi-Line, and Miles City Resource Management Plans on May 22, 2013. And did not receive a response until later in the day on July 17th. Why is that?

Can you explain why the Bureau refused to extend the comment period?

Response: The Department and the BLM apologize for the delay in the response. We appreciate the importance of these plans as they relate to the economies of local communities and states. For this reason, the BLM has emphasized participation by the public, partners, and other agencies. In accordance with planning regulations, all of the draft plans were made available for public review and comment for a full 90 days, with administrative review copies available to cooperating agencies at various times throughout the planning process. While we acknowledge the large scope of the documents, the 90-day public comment period could not be extended without jeopardizing the BLM's commitment to addressing greater sage-grouse habitat conservation in the time-frame necessary to inform the U.S. Fish and Wildlife Service's

Endangered Species Act listing decision which must be completed by the court-mandated date of September 30, 2015.

In addition to the formal 90-day comment period, the BLM held 34 formal public scoping meetings, conducted five community economic workshops, and provided numerous briefings for cooperating agencies, user groups, environmental organizations, industries, county commissions, tribes, congressional staffs, other agencies, and the BLM's Resource Advisory Councils. Collectively, the Montana plan revisions involved 57 cooperating agencies, including counties, state and federal agencies, tribes and grazing/conservation districts. Our managers and planning teams addressed and incorporated public scoping comments and issues submitted throughout the planning process and have provided newsletters and website updates to keep our stakeholders informed of our progress. We value public input and will continue to accept substantive comments throughout the process.

In the mega-settlement which you had referenced in a response letter to my constituents as the reason you could not extend the comment period, was just only the timing of the listing of the GSG species agreed to in that settlement? Or was the timing and issuance of proposed RMPs part of the settlement?

Response: The issuance of the proposed RMPs was not specifically part of the settlement of the ESA Deadline Multi-District Litigation filed against the Fish and Wildlife Service, but it is a critical component in the larger effort to conserve greater sage-grouse and potentially avoid the need for a listing at the time of the required decision.

Moving forward with Sage Grouse conservation in Montana, how closely is the BLM going to rely on state data?

Response: Sage-grouse conservation in Montana and the Dakotas is a multi-jurisdictional challenge due to fragmented land ownership patterns across large portions of sage-grouse habitat, making a collaborative approach essential. The BLM has been working with state fish and wildlife agencies, local working groups, and other organizations throughout the BLM's National Greater Sage-Grouse Planning Strategy process. The BLM has a long history of working cooperatively with the State of Montana, including using their data and mapping of sage-grouse habitat in the BLM plans. The Montana/Dakotas BLM is also involved in the Montana Governor's Greater Sage-Grouse Habitat Conservation Advisory Council, and we will consider the final state management plan when we formulate our proposed management actions for each land use plan.

52. Sage Grouse and Hard Rock Mining:

Madame Secretary: I have a quote from the HiLine Draft Resource Management Plan and this is what it says:

"The management of wildlife resources and habitat outside of special designations would seldom prevent locatable mineral development, but in order to avoid significant impact to wildlife, special conditions and possible relocation of exploration or mining development could occur. This relocation, as well as any additional mitigation, would create time delays and further expenses for locatable mineral development if not closing the area to mineral entry through withdrawal."

It's my understanding that the determining factor in the location of mineral deposits is the geology of an area. So if that's the case how do you propose to relocate [mineral] "exploration or mining development" in a manner that's practical and consistent with that does not seem like a practical solution to me nor does it seem to be consistent with the Federal Land Policy and Management Act of 1976?

Did you have any economic (mining) geologist or mining engineers work on this document? If there had been, I don't understand how doubt the preceding s type of statement could would have been included in the Resource Management Plan.

Response: The BLM uses an interdisciplinary team, including solid minerals specialists, in the development of its RMP revisions and amendments. Information in the RMP is used to guide activities on BLM lands. When a Notice or Plan of Operations for a mine is filed with the BLM, the proposed exploration or mining of locatable minerals is reviewed to confirm that the operations conducted will comply with the RMP and not cause unnecessary or undue environmental degradation. If necessary, conditions or mitigating measures may be applied. Such measures, as referenced in the RMPs, could include relocation of infrastructure such as access routes, power lines, tailings impoundments, or leach pads. As analyzed in the quoted RMP section, these conditions of approval or modifications may be more likely in areas identified as valued wildlife habitat. Therefore, mineral development in wildlife habitat may be delayed or modified to include more prescriptive mitigation measures.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 1 1 2014

The Honorable Ron Wyden
Chairman
Committee on Energy & Natural Resources
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Committee's September 19, 2013, oversight hearing "To examine wildlife management authority within the State of Alaska under the Alaska National Interest Lands Act and the Alaska Native Claims Settlement Act."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Lisa Murkowski
Ranking Member

FROM SENATOR LISA A. MURKOWSKI

Gene Peltola, Jr., Assistant Alaska Regional Director, Office of Subsistence Management, US Fish and Wildlife Service, Anchorage, Alaska

1) **Unimak Island** - Mr. Peltola, as you know, the caribou herd on Unimak Island is nearing a critically low point – subsistence users have even been banned from harvesting caribous – but USFWS and the Alaska Department of Fish and Game have been unable to reach an agreement on how to proceed with managing the herd numbers. Can you please address if and when the EIS will be revisited?

Response: Beginning in 2010, concerns about the Unimak Island caribou herd led the Alaska Department of Fish and Game (ADF&G) to propose wolf control as a means of addressing the declining caribou population on Unimak Island. The U.S. Fish and Wildlife Service (Service), with the ADF&G as a formal cooperator, prepared an Environmental Assessment (EA) to analyze the proposal and alternatives, in compliance with the National Environmental Policy Act. The EA examined whether or not predation management, primarily wolf control, was needed to affect an increase in the caribou herd. In March 2011, the Service determined that an EIS was not necessary and issued a Finding of No Significant Impact (FONSI) after selecting the No Action Alternative, thereby not authorizing the predator management on Unimak Island. At this time, there is no plan to revisit the decision.

a. Currently, is it legally possible for the State ADF&G to conduct any predator management on Unimak Island?

Response: No, as noted above, the Service issued a FONSI after selecting the No Action Alternative in March 2011, thereby not authorizing the predator management proposed by the State on Unimak Island.

b. Can you explain what will be done by the Department of the Interior to ensure that this herd is not wiped out?

Response: Preliminary indications are that the Unimak caribou herd is a sub-population of the Southern Alaska Peninsula caribou herd (SAPCH), operating at the western extent of the larger population's range. There is interchange of animals across the channel, but the Unimak herd is somewhat isolated and appears susceptible to wide fluctuations in numbers. Caribou on Unimak Island have an affinity to calving grounds on the island away from the calving areas used by the SAPCH. It is likely that the expansion and contraction of the larger population on the Alaska Peninsula over time may be the ultimate driver for caribou numbers on Unimak Island. In the view of the Service, the current situation does not necessitate predator management.

2) **Wildlife Management Authority** - Do you believe that the State of Alaska has the right to manage wildlife within the borders of the State? When is it proper for the federal government to reverse State Board of Game decisions?

Response: The State of Alaska has the right to manage wildlife on Federal lands within the borders of the State subject to certain requirements, including those of Title VIII of ANILCA. However, in the event that the Alaska Board of Game adopts regulations that are counter to Federal law or management objectives adopted after public planning processes, it is appropriate to preempt those State regulations on Federal lands such as National Wildlife Refuges and National Parks.

a. ANILCA and ANCSA require Federal agencies to provide subsistence opportunities in Alaska. Why have federal agencies been reluctant to employ active management (including predator control and habitat enhancement) to meet their statutory mandates?

Response: In 1992, when the Federal Subsistence Program's Environmental Impact Statement was finalized, the Secretaries concluded that decisions relating to predator control and habitat manipulation were best left to the individual land managing agencies rather than the Federal Subsistence Board. This conclusion was based on the recognition that the different agencies operate under different statutory mandates.

By way of example, with regard to the Service, Title III of ANILCA states the purposes for which the refuges in Alaska are established. For all refuges, these purposes include "to conserve fish and wildlife populations and habitats in their natural diversity" and that providing subsistence opportunity, while also an important purpose of most refuges in Alaska, is to be carried out in a manner that is consistent with the natural diversity and international treaty obligations stated in the purposes of the refuges. Without appropriate justification, the significant reduction of one species to increase the numbers of another is inconsistent with the natural diversity purposes of the refuge. Further, the Service's biological integrity policy guiding management on refuges is clear in that we strive to manage wildlife populations for natural densities and within historical levels of variation. We may alter this management approach to recover Threatened and Endangered (T&E) species or to address loss of habitat or populations at larger scales. The policy also states that natural extirpation is a normal ecological process and at times is acceptable. Finally, in areas of the Refuge System designated as Wilderness, the Service is required to protect and preserve the wilderness character of those areas. Wilderness character is defined largely by measuring naturalness and the degree of trammeling.

Service policy 610 FW 2.16 states major ecosystem processes such as predator/prey fluctuations may be natural ecological and evolutionary processes and that we will not interfere with these processes unless it is a "disrupted predator/prey relationship.", that is, the imbalance between predators and prey within an environment resulting from, for example, the introduction of an invasive species or other unnatural conditions. This section also states that when we do intervene, it must be to respond to either a human emergency, or it must be the minimum requirement for administering the area for the purposes of the refuge, including wilderness

purposes, to do one of two things: either restore the biological integrity of the area or to assist in the recovery of T&E species. Service policy 610 FW 2.20 describes the limited application of predator control in wilderness areas for the benefit of native fish, wildlife, plants or their habitat but states predation management must be compliant with 610 FW 2.16.

b. Do you believe active management (including predator control) would be warranted to prevent the extirpation (or complete elimination) of a wildlife population relied upon by subsistence users to support their physical, economic, traditional, and cultural existence?

Response: As noted above, absent appropriate justification, the significant reduction of one species to increase the numbers of another is inconsistent with the natural diversity purposes of refuges. Further, the Service's biological integrity policy guiding management on refuges is clear in that we strive to manage wildlife populations for natural densities and within historical levels of variation. We may alter this management approach to recover Threatened and Endangered (T&E) species, to address loss of habitat or populations at larger scales, or to respond to human emergency situations.

c. Do you use active management, including predator control or habitat enhancement, in other locations throughout the country?

Response: Yes, the Service employs predator management or habitat manipulation to recover Threatened and Endangered (T&E) species, to address loss of habitat or populations at larger scales, or respond to human emergency situations.

3) **Federal Subsistence Management Program** – How many funding requests from Native organizations does the FSMP receive annually?

Response: Between 2008 and 2012, an average of 24 project proposals from Alaska Native organizations have been submitted biannually to the Fishery Resource Monitoring Program (FRMP) for possible funding and an average of 13 projects at $3.0 million were awarded funding. Under consideration in 2014, 26 proposed projects were received from Alaska Native organizations and 19 are being recommended for funding at $1.8 million for 2014 and a total of $6.7 million to support work from 2014-2017.

By way of background, the FRMP, within the Federal Subsistence Management Program, was established to provide information necessary for effective management of subsistence fisheries on Federal public lands. Every two years the FRMP seeks submission of technically sound project proposals that gather information to manage and conserve subsistence fishery resources in Alaska. The FRMP encourages project proposals that support meaningful collaboration among Federal, State, Alaska Native and local organizations. All project proposals are evaluated through a competitive process. The project proposals are first evaluated by the Technical Review Committee, represented by five Federal agencies and three members from the State of Alaska, for strategic priority, scientific merit, investigator ability, and partnership and capacity building. Next, the Regional Advisory Councils provide a recommendation based on their knowledge of regional subsistence resources and uses. The Federal Subsistence Board

determines final project priority based on the recommended actions of the Technical Review Committee and the Regional Advisory Councils.

a. Is the FSMP able to fund all of them?

Response: No, as indicated above, the FSMP is not able to fund all requests.

b. How do they prioritize the allocation of funding between the State and the tribes?

Response: As explained above, all project proposals, including those from the State and from the tribes, are evaluated through a competitive process. The project proposals are first evaluated by the Technical Review Committee, represented by five Federal agencies and three members from the State of Alaska, for strategic priority, scientific merit, investigator ability, and partnership and capacity building. Next, the Regional Advisory Councils provide a recommendation based on their knowledge of regional subsistence resources and uses. The Federal Subsistence Board determines final project priority based on the recommended actions of the Technical Review Committee and the Regional Advisory Councils.

4) **Council of Athabascan Tribal Governments (CATG) AFA –** CATG and the USFWS currently have an Annual Funding Agreement in place at the Yukon Flats National Wildlife Refuge. Can you expand upon what responsibilities the AFA provides to CATG?

Response: Since the first Annual Funding Agreement (AFA) was negotiated in 2004, the U Service, Yukon Flats National Wildlife Refuge (Refuge) has had seven AFAs with the CATG. The scope of the projects included in the AFA's have covered a wide variety of subject areas, including moose management activities, environmental education activities, locating 17(b) easements, wildlife harvest data collection and logistic support. While the amounts per project have varied, the total annual amount has typically been around $60,000. This amount comes out of base funds for the Yukon Flats Refuge, and in recent years, declining budgets have presented a challenge for negotiating projects at a reasonable and workable price. The AFA currently under negotiation includes a scope of work that describes public outreach and education to increase support for moose management planning efforts on the Yukon Flats Refuge.

a. Can we expand the AFA model to each refuge?

Response: Expanding the AFA model to each Refuge would depend on tribal interest and abilities, available funding, and the needs of a particular refuge.

5) **Habitat Enhancement –** Does the USFWS engage in habitat enhancement? If so, does the Service work with the State of Alaska on such activities?

Response: The Service has a long history of working cooperatively with the State of Alaska to implement voluntary habitat improvement projects (i.e., enhancement, restoration and protection) totaling more than $3 million in FY2013 to sustain habitat needed for naturally self-

sustaining populations of fish and wildlife to support subsistence and other uses. Three examples demonstrating this relationship with the State of Alaska are:

National Fish Habitat Partnerships: Since 2008, the Service and ADFG have been working together, in association with myriad public and private entities, to stand-up collaborative voluntary partnerships to protect and restore habitat for priority fish and aquatic species. Each year, the three National Fish Habitat Partnerships (FHPs) in Alaska implement on-the-ground projects to restore habitat for Pacific salmon and other fish species with FHP strategic plans. Projects can include actions to remove barriers to fish passage, control invasive species, and conserve important salmon spawning and rearing habitats.

Chinook Salmon Conservation along Yukon River and its Tributaries: Chena River Chinook salmon make up the second-largest annual run in U.S. waters of the Yukon River. This stock is important to subsistence and commercial users in the lower Yukon River and supports one of the few road-accessible salmon sport fisheries in interior Alaska. Today, river- and fishing-related tourism and recreation supported by the Chena provide substantial benefits to visitors and residents alike. To help conserve the Chena river and foster stewardship of its fisheries and its contributions to the Yukon River Chinook Salmon fisheries, the Service is teaming up Alaska Departments of Fish and Game / Natural Resources, local businesses, Chena riverfront landowners, and a variety of other partners (e.g., Fairbanks Soil and Water Conservation District, Army Corps of Engineers and Wounded Warriors) to implement habitat improvement projects for the benefit of juvenile Chinook salmon.

The Habitat Restoration Cost Share Program: This popular proactive financial incentive and assistance program provides project funding and technical expertise to private landowners voluntarily restoring and conserving habitat for salmon and aquatic species. Under this program, the Service partners with the Alaska Department of Fish and Game to conduct restoration workshops and work with landowners to design and implement cost-effective habitat improvement projects. Landowners contribute to the cost of the project. Habitat fragmentation and loss are leading factors contributing to the decline of freshwater aquatic species.

6) **Regional Advisory Councils (RACs)** – Currently, RACs provide recommendations and information to the Federal Subsistence Board (which is made up of Federal Government employees). Since I think we can all agree changes to the current system need to be made, what would be your opinion about giving the RACs more power beyond recommendation and information authority?

   What about changing the construct of the Federal Subsistence Board? Too often in Alaska we have government entities telling Alaskans what is best, so how about reforming the FSB to include representatives from each region who actually live the subsistence lifestyle and are elected to such a position by their peers? Would this improve on the ground management decisions and ownership of such decisions by rural residents?

Response: In response to Secretarial direction in 2010, the Federal Subsistence Board (Board) expanded deference to the Regional Advisory Councils (RACs) to include traditional and

customary use. As directed in ANILCA title VIII, Section 805(c), the Federal Subsistence Board may reject a RAC recommendation on the taking of fish and wildlife only if that recommendation:

(1) is not supported by substantial evidence;
(2) violates recognized principles of fish and wildlife conservation; or
(3) is detrimental to the satisfaction of subsistence needs.

Since the inception of the program, the Board has supported RAC recommendations on the taking of fish and wildlife 95 percent of the time. Rejection of a RAC recommendation has most often occurred when two or more RACs are not in agreement with each other.

The powers and duties of the RACs are listed in 50 CFR 100.11(c).

With regard to altering the composition of the Board, it is important to note that Board membership was recently expanded so that its composition now includes three rural subsistence users, one of whom is the Chair. If further changes to Board membership are to be considered, one potential issue involves the improper delegation of inherent governmental duties to nongovernmental entities or members. A concern would be diminishing the importance of the RACs and weakening the key role that they presently hold in the program. Each RAC is charged with holding public meetings within their respective regions and also with providing a forum for the expression of opinions and ideas by persons in any matter related to subsistence uses within the region. A final consideration relates to the statutory mandates which direct and guide individual land managing agencies. It could prove difficult for the agencies to meet those mandates if they have no role in the decision making process that impacts the fish and wildlife populations on those lands that they are charged with managing.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 1 1 2014

The Honorable Doug Lamborn
Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Geological Survey to the questions for the record submitted following the December 5, 2013, legislative hearing on H.R. 1604, the Map it Once, Use It Many Times Act.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Rush Holt
Ranking Minority Member

Responses from USGS to HNR 12.5.13 hearing on Map It Once Act:

1. **Do we know how much the Federal government spends on geospatial activities each year?**
   - **How much is spent in-house and how much by contract?**
   - **What is the total U.S. geospatial market and what percentage does the Federal government represent?**

Geospatial data and tools are becoming ubiquitous in the consumer marketplace, in academia, in industry and in government. A 2012 published report from the Boston Consulting Group estimated that geospatial services (electronic maps and satellite imagery describing our physical and human environment) and the geospatial services industry (businesses, consumers, and government and non-government organizations) generated about $73 billion in revenues in 2011 and involves about 500,000 high-wage jobs (about equal to the airline industry). The report estimates that geospatial services deliver efficiency gains in the rest of the U.S. economy valued at many times the size of the sector itself, creating a lasting source of competitive advantage for the U.S. Such services are used on a daily basis by about 5.3 million U.S. workers (over 4% of the U.S. workforce). U.S. consumers put a direct value on geospatial services at $37 billion annually.

The Federal Government's use of geospatial data and tools has created, and continues to create, extraordinary gains in efficiency and in some cases has revolutionized the way that Federal programs are delivered, dramatically improving services to citizens. As the use of geospatial data and tools continues to permeate the many aspects of Federal programs, it is increasingly more difficult to separate geospatial investments from investments in programs, tools, data, or technology more broadly. Currently, there is no formal definition of "geospatial activities" and no comprehensive report or mechanism that totals how much the Federal government (Defense and non-Defense agencies) spends annually on "geospatial activities." Additionally, there is no data representing the Federal share of the total U.S. geospatial market. Efforts are underway however, to establish reporting processes that focuses on federal investments in national geospatial data sets, a critical component of the Nation's infrastructure.

The Federal Geographic Data Committee (FGDC) member agencies are developing the A-16 Portfolio Management Implementation Plan (Plan), established by the Office of Management and Budget (OMB) in 1990 and re-chartered in the 2002 revision of Circular A-16 "*Coordination of Geographic Information and Related Spatial Data Activities*". The FGDC is a 32 member interagency committee composed of representatives from the Executive Office of the President, and Cabinet level and independent Federal agencies. The FGDC promotes coordinated development, use, sharing and dissemination of geospatial data on a national basis. FGDC activities are administered through the FGDC Secretariat, hosted in the U.S. Geological Survey.

The Plan outlines an approach for instituting a portfolio management process that supports efficient and effective sharing of geospatial assets across the Federal enterprise, its partners, and stakeholders. Focused initially on national geospatial data sets, recognized as capital assets, a 3-year phased approached will be implemented to identify, document, and evaluate, existing federally created or managed geospatial data. This effort will also develop processes for reporting existing levels of federal geospatial data investment, gaps in the existing data holdings, and projections of additional levels of investment needed to ensure the nation has the data required to address national, regional, and local issues and priorities.

With regard to the question: **How much is spent in-house and how much by contract?**

The USGS is committed to leveraging the expertise of the private sector for the acquisition of geospatial services and data. As documented in the National Enhanced Elevation Assessment (NEEA), there is a National need for high resolution elevation data (LiDAR and IfSAR), estimated at $150 million per year, with an estimated return on investment of up to $13 billion annually. The USGS 3D Elevation Program (3DEP) has been designed to utilize the private sector to fulfill that need. In 2013, the USGS demonstrated success in combining the resources of Federal and State agencies to award approximately $25 million in contracts to the private sector for the acquisition of high resolution elevation data (described in more detail below). We estimate that an additional $25 million in high resolution elevation data is acquired annually by public institutions without USGS participation, leaving a remaining gap of approximately $100 million to fulfill the vision for 3DEP. We have no data as to what extent of the estimated $25 million collected without USGS participation is acquired in-house vs. contracted.

The USGS administers a set of Indefinite Delivery Indefinite Quantity (IDIQ) contracts awarded through a competitive, qualifications-based selection process, which provides a mechanism to obtain geospatial data and services throughout the United States. The contracts are flexible and can be used by other Federal, State, and local agencies. The Geospatial Product and Service Contracts (GPSC) are a suite of contracts, broad in scope, that can accommodate activities related to standard, nonstandard, graphic, and digital cartographic products. Services provided may include: photogrammetric mapping and aerotriangulation, orthophotography, thematic mapping (for example, land characterization), digital imagery applications, IfSAR and lidar, geographic information systems development, surveying and control acquisition including ground-based and airborne GPS, and much more.

Over 2010-2013, the USGS awarded over $20 million per year through the GPSC contracts. Much of this funding came from other Federal, State, and local agencies to support projects of mutual interest. Other Federal agencies engaging in projects which make use of these and other contracts include other Department of the Interior (DOI) agencies such as the National Park Service and the Office of Surface Mining as well as Federal agencies from outside the DOI, including the National Geospatial Intelligence Agency (NGA), the U.S. Forest Service, the Natural Resources Conservation Service, and the Federal Emergency Management Agency. Spending by these other agencies is likely to be substantially less than that for the USGS and the NGA since their requirements are typically limited in their geographic extent and do not require the same level of information to perform their land management missions.

2. Sec. 201 of the Federal Land Policy and Management Act, FLPMA, [43 U.S.C.1711] says, "The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." Is that inventory on-line or posted somewhere for public review?

The Bureau of Land Management (BLM) maintains and updates the inventory of the public lands managed by the BLM through its land use planning process. Maintenance of or updates to inventories do not, of themselves, change the management or use of public lands. Such information can only

change the management and use of public lands through the land use planning process to revise or amend land use plans pursuant to 43 U.S.C. 1712. Currently, the BLM has 157 individual Resource Management Plans (RMPs), i.e., land use plans, which are developed with opportunities for full public participation at local, state and national levels. These RMPs provide general management goals and objectives, land allocations for resource uses and management prescriptions to control the resources and resources uses applicable to all activities authorized by the BLM. The RMP is based on an inventory and assessment of a broad range of resource values and public land uses. Approved RMPs are available on-line through the BLM website. Additionally, those RMPs currently being revised are available on-line through the BLM website as Draft and Proposed RMPs.

3. Does the Interior Department or anyone in the Executive Branch know how many different land inventories are currently maintained?

In respect to the Federal Land Policy and Management Act, FLPMA, [43 U.S.C.1711] the following text is included: "(e) The term "public lands" means any land and interest in land owned by the United States within the several States administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except – (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos." The BLM maintains and updates the inventory of public lands managed by the BLM per the FLPMA.

While other Federal agencies have data about the public lands they manage, such as the Forest Service or the DoD, and many States have data on the public lands over which they have jurisdiction, the DOI is not aware of a formal definition of what constitutes a land inventory (beyond the FLPMA requirements for BLM lands). As such, the DOI does not know how many other land inventories may exist outside the Department, nor is it aware of another source of that information.

4. According to the National Academy of Sciences study on a national parcel system, "the cost of completing parcel data for the nation is estimated to be about $300 million." If the cost for the entire nation is $300 million, how does the Interior Department estimate H.R. 916 will cost "many billions of dollars"?

The National Academy of Sciences cost estimate is based on parcel data substantially narrower in scope than the FLAIR Act requirements. Its parcel model costs include a very basic set of attributes that support only the discovery and navigation of parcels which is substantially different than the details stipulated in the FLAIR Act. The FLAIR Act would direct the Federal government to collect extensive data for both the surface and subsurface estate concerning the "use, value, assets and restrictions associated with each parcel." This would require an inventory of all valid existing rights, resources, and restrictions associated with each parcel as well as appraisals and inventories. The BLM's initial estimate of costs as provided to the Committee in 2012 was based on the information required in the FLAIR Act; the estimate is potentially in excess of $50 billion. The estimate is summarized as follows:

Total acres owned by Federal government:	635- 640 million acres
Total Federal acres divided into 40-acre parcels:	15.8-16 million parcels

Federal Parcel Task	**Approximate Costs**

Automate parcel maps	$6/parcel	$95 million
Collect Linkages for critical information	$3/parcel	$47 million
Collect resource and use information	$1/acre	$635 million
Determine estimate of value	$2,500/parcel	$39 billion
Determine mineral resource potential	$1/acre	$635 million
Cultural/archaeological resource inventory	$12-$45/acre	$7- $28 billion

TOTAL **$47 billion - $68 billion**

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 17 2014

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the U.S. Fish and Wildlife Service to questions submitted following the Subcommittee's September 20, 2013, oversight hearing on *"The U.S. Fish and Wildlife Service Proposal for a Categorical Exclusion for the Listing of Species as Injurious Wildlife."*

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

cc: The Honorable Gregorio Sablan
Ranking Member

Questions for the Record
House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs Hearing on September 20, 2013

U.S. Fish and Wildlife Service

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(1). Question: Did you consult with the Council on Environmental Quality on the proposed Categorical Exclusion? Please provide the Subcommittee with copies of your correspondence to them.

Response: Pursuant to section 1507.3(a) of Council on Environmental Quality (CEQ) Regulations, the Service must consult with and receive approval from the CEQ before establishing a new or revised categorical exclusion. For this categorical exclusion, the Service coordinated with CEQ through the Department's Office of Environmental Policy and Compliance (OEPC).

(2). Question: In the future, how will the regulated community know when the Service used a Categorical Exclusion? Is there a requirement to print its use in the Federal Register?

Response: In the future, when the Service uses a categorical exclusion in a rule to list a species as injurious, the Service will include that information when it publishes its proposed and final rules in the Federal Register. This information is required and will be found under the heading "Required Determinations" and the subheading "National Environmental Policy Act", where each published injurious wildlife rule will include information on how the Service addressed NEPA and whether the Service relied upon a categorical exclusion.

(3). Question: If the Categorical Exclusion is utilized, what sort of record will the Service's decision be based on and will such record be provided to the public?

Response: If the Service uses a categorical exclusion, we must document our decision with an Environmental Action Statement (form 550 FW 3, Exhibit 4; attached). That form will be part of the broader Administrative Record for the injurious wildlife rulemaking and will be made available to the public.

(4). Question: Will the Service's "extraordinary circumstances" analysis be published, either in the record or in the Federal Register notice?

Response: In determining whether to utilize the categorical exclusion, the Service will consider whether any of the "extraordinary circumstances" set forth in 43 CFR 46.215 applies to the proposed action, and will document that determination in the Environmental Action

Statement and injurious wildlife rulemaking administrative record.

(5). Question: What is a normal time-frame to complete an Environmental Impact Statement (EIS)? What about the costs to the agency?

Response: Time-frames and costs for environmental impact statements vary widely with the complexity of each proposed action. Preparation times for environmental impact statements among Department of the Interior bureaus have ranged from 18 months to 5 years at costs ranging from around $500,000 to $2 million.

(6). Question: How long does it take to complete an Environmental Assessment? How is it fundamentally different from an EIS? What are the cost differences between the two?

Response: Environmental Assessments (EAs) may take up to 1 year to complete, but we have no cost estimates for them. The content requirements for an EIS are more extensive than for an EA and are set forth in Council on Environmental Quality regulations at 40 CFR §§1502.10 through 1502.25. In contrast, environmental assessments include brief discussions of the proposal, the need for the proposal, alternatives, environmental impacts of the proposed action and the alternatives, and a list of agencies and persons consulted (40 CFR §1508.9 and 43 CFR § 46.310).

(7). Question: What is the value of these environmental assessments?

Response: Under NEPA regulations, the purpose of an environmental assessment is to determine whether the proposed action has the potential to cause significant impact on the human environment and to inform the decision maker and the public of such environmental determinations. The EA is used to determine whether to prepare an environmental impact statement or to make a finding of no significant impact (FONSI). Its value lies in saving an agency from having to prepare a very lengthy document (EIS) when there is reason to believe that an EIS will not be necessary.

8) Question: When the Fish and Wildlife Service proposes to administratively establish a new national wildlife refuge does it conduct an Environmental Impact Statement or an Environmental Assessment? Who makes that decision?

Response: The Service routinely completes an EA for refuge establishments and major refuge expansions, unless circumstances warrant the completion of an EIS. The regional director decides if an EIS is to be completed at the outset, rather than an EA, based on a review of known or reasonably foreseeable, potential impacts on the human environment or that controversy over the environmental effects exists. The assessment made through the development of the EA may result in a determination that an EIS is necessary. In either case, with respect to refuge establishments and major refuge expansions, developing an EIS has been rare. For example, every establishment and major refuge expansion in the Southeast Region over the past 25 years has been accomplished through the completion of an EA with the exception of the establishment of Waccamaw National Wildlife Refuge (NWR) in 1998. The Waccamaw establishment was completed through an EIS at

the request of State elected officials and because of the level of environmental controversy associated with the proposed project.

9) Question: In the case of the Everglades Headwaters National Wildlife Refuge, the Fish and Wildlife Service conducted an Environmental Impact Statement. Why was this considered a major federal action?

Response: The Service did not find the establishment of Everglades Headwaters NWR to be a major federal action under NEPA requiring preparation of an EIS. An EA for the establishment of Everglades Headwaters NWR was prepared, and it was published in January 2012. The EA resulted in a Finding of No Significant Impact, which negated the need to prepare an EIS.

10) Question: Conversely, when the Fish and Wildlife Service proposed to increase the size of the Chickasaw and Lower Hatchie National Wildlife Refuges in Tennessee, which would be more than twice the number of acres acquired by fee title in Central Florida, the Service used an Environmental Assessment. What was the difference?

Response: Similar to the establishment of Everglades Headwaters NWR, the Service has drafted an EA in the proposed boundary expansions of Lower Hatchie and Chickasaw NWRs. The draft EA is not yet final.

11) Question: Does the Fish and Wildlife Service use an Environmental Impact Statement or Environmental Assessment for the completion of a statutory required refuge Comprehensive Conservation Plan? Wouldn't it be much more efficient to simply seek a Category Exclusion for the completion of these plans?

Response: Similar to the land acquisition planning process, the decision to complete an EIS or EA for a refuge's Comprehensive Conservation Plan (CCP) is usually based on a review of known, reasonably foreseeable potential impacts of the project on the human environment or environmental controversy that exists at the outset of determining the need for the action. According to Service Manual 602 FW 3, each CCP must comply with NEPA through the concurrent preparation of an EA or EIS for the completion of the plan. A CCP describes the desired future conditions of a refuge and provides long-range guidance and management direction to achieve refuge purposes, as well as compliance with various laws and executive orders. Given the nature of a CCP, the variability between needs and management approaches at each NWR, and the often complex environmental and sociological issues involved, either an EA or an EIS is appropriate for the completion of a CCP.

The Service may use only categorical exclusions that have been approved. There is no categorical exclusion on record for the CCP, and the Service does not believe this activity fits the guidelines for establishing categorical exclusions.

(12). Question: Has the Fish and Wildlife Service previously sought a Categorical Exclusion for Lacey Act listings in the past?

Response: Although the Service has utilized an existing NEPA Categorical Exclusion (see response to Question 16), it has not previously sought the addition of a new Categorical Exclusion for the listing of injurious wildlife under the Lacey Act.

(13). Question: If you have not, what has dramatically changed that cries out for this fundamental change? After all, you are already doing just an Environmental Assessment on these species. Is that not correct?

Response: The Service implements 18 U.S.C. 42 to protect United States interests from the harm such species can cause to the nation's economic, environmental, and human interests. This statutory tool protects these interests by preventing harmful species from being imported into the nation or from being transported over state lines without a permit. However, the administrative process for listing injurious wildlife can be protracted and complex, reducing its effectiveness. We are seeking opportunities available under the regulatory process to expedite the listing process and, in so doing, support the purposes of the Lacey Act's injurious wildlife provisions.

(14). Question: Under a Categorical Exclusion is the Fish and Wildlife Service required to conduct any environmental analysis? Please describe in detail.

Response: For the purposes of rulemaking, the Administrative Procedure Act (APA) requires the Service to explain in our listing rules the basis for our determination. For each proposed injurious wildlife listing, we also present risk and biological assessments of the proposed species for injuriousness in the listing rule as part of our analyses that we use in the decision-making process to justify listing species under the Lacey Act. The risk and biological assessments are not specifically required in the law, but the Service provides them as a part of our explanation for the basis of our determinations.

If a categorical exclusion is applied to a Federal action, an Environmental Action Statement is prepared. The Service explains why the proposed rule qualifies for the categorical exclusion under NEPA and also considers whether any of the "extraordinary circumstances" found at 43 CFR 46.215 apply.

(15). Question: Is the Fish and Wildlife Service required to complete an economic analysis under a Categorical Exclusion? Please describe in detail.

Response: Under NEPA, an economic analysis is not required, but it may be carried out as part of an Environmental Assessment in order to assess the economic impacts generated by the impacts of a Federal action on the human environment. If a Federal action is eligible for a categorical exclusion, it has no significant impacts on the quality of the human environment, and therefore no economic analysis is carried out for that purpose.

However, as part of the rulemaking process, the Regulatory Flexibility Act (RFA) requires Federal agencies to analyze the effect of their regulatory actions on small entities (small businesses, small non-profit organizations, and small jurisdictions of government) and consider less burdensome alternatives, ifthe regulatory effect is likely to be "significant," affecting a "substantial number" of these small entities. The economic analysis conducted by the Service under the RFA is

independent of any requirements or process under NEPA.

Also part of the rulemaking process, Executive Order 12866 for Regulatory Planning and Review looks at whether: (1) the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (2) the rule will create inconsistencies with other Federal agencies' actions; (3) the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or (4) the rule raises novel legal or policy issues. Significant rulemakings under EO 12866 are required to assess the potential costs and benefits of the regulatory action, which would extend to impacts beyond the scope of analyses pursuant to RFA. Any "economically significant" rulemakings under section 3(f)(1) of this Executive Order must include not only an assessment of costs and benefits but also reasonably feasible alternatives. The Service will continue to conduct economic analyses, where appropriate, under this Executive Order, for injurious wildlife listing actions, regardless of whether or not the proposed categorical exclusion is finalized.

(16). Question: In 2002, the Service utilized the Department's Categorical Exclusion to list the brushtail possum and snakehead fish. Why is it no longer appropriate to utilize this existing authority?

Response: In 2002, the Service used an existing departmental categorical exclusion: "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case" [(43 CFR 46.210(i)] in the listing actions for the brushtail possum and snakehead fish species. The Service stated in its proposal for the categorical exclusion at issue: "Upon further review, the Service believes that this is not the best description of why injurious species listings do not have a significant effect on the human environment. Therefore, the Service is pursuing the addition of a new categorical exclusion for the listing of injurious species under the Act."

(17). Question: In its comments on the proposed Categorical Exclusion, the United States Association of Reptile Keepers claims the Environmental Assessment the Service prepared for this listing failed to address significant scientific issues and to respond to significant environmental issues raised by environmental groups, state wildlife officials, the zoo and aquarium community, academic and private conservation researchers during the comment period. How were these issues addressed in the NEPA documents?

Response: Many of the comments raised by United States Association of Reptile Keepers (USARK) for the Service's listing of several constrictor snakes as injurious wildlife were for subjects not relevant to NEPA. They were addressed in responses published in the final rule.

(18). Question: Of the previous 230 Lacey Act listing, how did the constrictor snake case compare and contrast with those efforts? Isn't this the first time that a widely held species was listed as injurious?

Response: One example of how the listing of injurious wildlife has differed in some cases from the 2012 listing of large, constrictor snakes is by virtue of some prior listings having been completed through the legislative process. Reasons for listing by the Service may vary, depending on a range of factors that may include how the species may enter the United States or be transported between states, its natural history, and how it impacts the specified statutory interests. However, all injurious wildlife listings completed through the rulemaking process are consistent with all applicable Federal laws. Bighead carp, a species commonly kept and traded in the aquaculture industry and listed by Congress in 2010, was also a widely held injurious wildlife species at the time of listing, albeit not by individuals as pets.

(19). Question: Does the Service intend to use a Categorical Exclusion for the remaining five constrictor snakes that Secretary Salazar decided not to list 20 months ago?

Response: The proposed categorical exclusion (published in the Federal Register July 1, 2013) will not be applied in the Service's consideration of injurious wildlife listing for the remaining five species of large, constrictor snakes proposed for such listing in March of 2010.

(20). Question: When will a decision be made on these species? It strikes me that it is fundamentally unfair that these species have been treated as defacto listings for the past 20 months.

Response: The status of the remaining fives species is under consideration and review, and we anticipate that a decision will be made in early 2014.

(21). Question: What other species are pending a decision on whether they qualify as injurious wildlife? Please explain the delay.

Response: The Service received a petition in September 2009 to list all amphibians as injurious unless they are accompanied on import or interstate transport by a certificate declaring them as free of Batrachochytrium dendrobatidis (amphibian chytrid fungus). The Service published a Notice of Inquiry in the Federal Register in September 2010, and the petition is currently still under consideration. The Service also received a petition on May 28, 2003, from the North American Brown Tree Snake Control Team requesting that the entire Boiga genus of snakes be considered for inclusion in the injurious wildlife regulations. The Service published a Notice of Inquiry in the Federal Register on September 12, 2003. We received public comments and started the process for preparing a risk assessment for the Boigas. The delay for the listing process for these petitions is primarily due to their complexity, competing priorities, and limited available resources.

(22). Question: Under current law, the Fish and Wildlife Service can petition itself to list a species as "injurious wildlife". By making it easier or in the words of the agency "more efficient", are there any limits on what the Service could list under the Lacey Act? Could the ageney simply decide to list all non-native species?

Response: The Service may list species as injurious wildlife only to the extent allowed by existing Federal law. For example, the Lacey Act authorizes only specific taxonomic groups that may be listed as injurious (wild mammals, wild birds, fish, reptiles, amphibians, mollusks, and crustaceans). In addition, we must justify that they are injurious to the health and welfare of human beings, to the interests of forestry, agriculture, and horticulture, or to wildlife or wildlife resources of the United States. New efficiencies captured by the Service in the regulatory listing process must also conform to existing Federal laws. Making the process more efficient means that the Service will be able to expedite the injurious wildlife listing process, allowing it to tackle major threats to the American people and economy more cost-effectively, while also continuing to ensure that listings remain scientifically accurate and promote public transparency and accountability.

(23). Question: Does the Fish and Wildlife Service believe that the listing of non-native species as "injurious wildlife" is a priority program within the agency?

Response: The Service considers the listing of harmful species as injurious wildlife one of many priorities within the agency.

(24). Question: If yes, how many FTE's and how much money is dedicated to the listing program each year? Please provide to the Subcommittee an annual breakdown over the past twenty years on the number of FTE's that have worked on the listing process.

Response: The Service currently employs two FTEs for injurious wildlife. Prior to 2000, listing of injurious wildlife activities were carried out as part of the duties of staff also assigned to other work in the Fish and Aquatic Conservation Program. From 2000 until 2009, the Service dedicated one FTE for injurious wildlife listing. A second FTE was added in 2010. Funding for the listing program supports the FTEs (estimated at $150,000 per FTE per year) and includes some additional funds to support administering listings, such as Federal Register printing costs and related technical work, such as conducting risk assessments.

(25). Question: By contrast, the Fish and Wildlife Service has 1,139 employees working on the Endangered Species Act, 89 employees working in the Realty Division, and 105 employees in the Federal Aid to Sport Fish and Wildlife Program who calculate and distribute excise taxes collected by the Department of the Treasury to the states. Can you honestly tell me that 2 federal employees who must decide whether to list or not list a species demonstrates a commitment to remove the threats of invasive species?

Response: While the Service agrees that removing the threat of invasive species through the listing of injurious wildlife is important, the agency has no specific appropriation to carry out this work. Many statutory obligations and commitments are also considered in our allocation of limited discretionary funds, and most of our resources are appropriated for a specific purpose, such as Land Acquisition or the Sport Fish and Wildlife Restoration programs. The law prevents the Service from using specifically appropriated funds for purposes other than as intended by Congress.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 8 2014

The Honorable Don Young
Chairman
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
House of Representatives
Washington D.C. 20515

Dear Mr. Chairman:

Enclosed are responses prepared by the Office of the Assistant Secretary – Indian Affairs to questions submitted following the September 19, 2013, hearing before the House Natural Resources Subcommittee on Indian and Alaska Native Affairs on "Executive Branch Standards for Land-in-Trust Decisions for Gaming Purposes."

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and
Legislative Affairs

cc: The Honorable Colleen Hanabusa
Ranking Member

Enclosure

Questions from Ranking Member Peter DeFazio for Kevin Washburn, Assistant Secretary - Indian Affairs.

1. If a tribe already has one casino in their aboriginal territory, should they be allowed to place land into trust outside their ahoriginal territory- and in another tribe's aboriginal territory - to open a second casino?

Response: The Department follows all statutory and regulatory requirements when making determinations for tribal applications to acquire land in trust for gaming. The Indian Reorganization Act (IRA) does not impose aboriginal territory limitations on trust land acquisitions. The Indian Gaming Regulatory Act (IGRA) also does not limit the number of casinos a tribe may have, nor does it limit the locations where those facilities may be located. Section 20 of IGRA prohibits tribes from using land acquired in trust after October 17, 1988for gaming purposes unless the land meets one of the statutory exceptions.

The Department's regulations at 25 C.F.R. Part 292require that tribes seeking to conduct gaming on off-reservation sites pursuant to the "Secretarial determination," or "two-part" exception, include information regarding the distance of the land from the location of the tribe's government headquarters and its core governmental functions. The regulations also require that tribes include evidence of significant historical connections to the land, if any. *See* 25 C.F.R. §§ 292.16 – 292.18. Although Congress did not explicitly require these factors to be considered in IGRA, they are considered in the Department's Secretarial determination.

2. If a tribe already has a casino, but wants an additional casino in a bigger market, how does your agency view that proposal if the desired new market is not in that tribe's aboriginal territory?

Response: As noted in the response to the previous question, the Department follows all statutory and regulatory requirements when making determinations for tribal applications to acquire land in trust for gaming. Neither the IRA nor IGRA impose aboriginal territory limitations on off-reservation gaming sites. The regulations at 25 C.F.R. Part 292 provide specific criteria that the Department follows when making determinations on tribal applications to take land into trust for gaming. Part 292 requires tribes to include evidence of significant historical connections to the land, if any. The criteria in Part 292 are considered in the Department's final two-part determinations regarding land acquisitions for gaming.

3. There is no authority under the Indian Reorganization Act for placing lands into trust for gaming after 1988, correct? So any new trust land request for gaming cannot be authorized under the IRA?

Response: The IRA places no temporal limitations on the Secretary's discretion for placing land into trust for gaming or other purposes. The IGRA does, however, in certain circumstances prohibit gaming on trust lands acquired after October 17, 1988, unless the land meets certain statutory exceptions enumerated in Section 20 of IGRA.

Questions from Rep. Gosar for Kevin Washburn, Assistant Secretary - Indian Affairs.

4. Second Amendment Business Lease between the PIMA Center and Members of the Salt River Pima – Maricopa Indian Community

On May 23rd, my Arizona colleague Congressman David Schweikert sent a letter to Assistant Secretary Washburn (attached) asking him to facilitate conversations between the BIA Western Regional Office and the PIMA Center management to ensure the timely agreement and completion of a Second Amendment Business Lease between the PIMA Center and Members of the Salt River Pima – Maricopa Indian Community.

In August, he finally received a response from the BIA Western Regional Office (also attached). Despite assurances from the BIA Western Regional Office that they were working diligently to complete the approval process, it is my understanding that the agreement still has not been completed.

This lease agreement has approval from the Tribal Council of Salt River Pima – Maricopa Indian Community and an overwhelming majority of the property's landowners. What is holding up the completion of this agreement? Is there some legal issue preventing final approval?

Response: The Second Amendment that was the subject of Congressman Schweikert's inquiry has now effectively been withdrawn, and replaced by a Revised Second Amendment that is considered "deemed approved" by BIA, under applicable regulations. It is expected that a new Third Amendment will soon be submitted to BIA's Western Regional Office ("WRO"), seeking at least a partial 20-year extension of the maximum lease term (a broad extension that provision having been removed from the Revised Second Amendment, in order to expedite its approval).

As indicated in the August 5, 2013, interim response to Congressman Schweikert, WRO has taken the position that the rent payable under the lease should be increased during any broad extension period. At a September 12, 2013, landowners meeting, the reasons for this position were discussed, along with relevant regulations and options as to how and when such increases might be effected. A final response was provided (by copy of a November 4, 2013, letter responding to an earlier, near-identical inquiry from Senator Flake), and a follow-up meeting to discuss possible future amendments with the parties is scheduled for December 11, 2013.

Questions from Rep. Markwayne Mullin for Kevin Washburn, Assistant Secretary - Indian Affairs.

5. In general, I want to know what BIA's position is on tribes taking advantage of lucrative markets in other tribes' backyards where they do not have an aboriginal footprint.

Would your Agency's rules allow a tribe from say California to acquire land for gaming in Oklahoma?

Response: The Department follows all statutory and regulatory requirements when making determinations for tribal applications to acquire land in trust for gaming. Neither the IRA nor IGRA impose aboriginal territory limitations on off-reservation gaming sites. The Department's regulations at 25 C.F.R. Part 292 require consideration of many factors before making a determination on an off-reservation gaming application. Those factors include such things as the distance of the proposed gaming site from the applicant tribe's government headquarters, the existence of the applicant tribe's significant historical connection to the proposed gaming site, if any, and the possible adverse impacts on the applicant tribe and its members and plans for addressing those impacts. *See* 25 C.F.R. § 292. 17(f),(g) and (i).

Questions from Rep. Gwen Moore for Kevin Washburn, Assistant Secretary - Indian Affairs.

6. Preventing Reservation Shopping

The Department of Interior adopted regulations on Gaming on After Acquired Lands in 2008, 25 C.F.R. Part 292, which retain the Secretary's hroad discretion to approve the off-reservation or Secretarial Determination exception. As you know, many Members of Congress and others believe that "reservation shopping" is a big problem for Indian gaming because it undermines the credibility of Indian gaming as governmental gaming and it makes tribes look like they are simply commercial casino developers. As I see it, there are two main hallmarks of "reservation shopping"-when a tribe seeks to go a long distance from its homeland or existing Indian lands, and when a tribe chooses a casino site for obviously commercial or market considerations. There are two important protections against "reservation shopping" in IGRA and the Part 292 regulations. The first is to require that the applicant tribe has a significant historic connection to the land in question. The second is to require that the casino not detrimentally impact the surrounding community. On August 23, 20 13, the Assistant Secretary issued a Secretarial Determination for a casino on the Wisconsin-Illinois border, located 160 miles from the Menominee Reservation in northern Wisconsin, even though the Menominee Tribe already has a successful casino hotel on its reservation and it has more tribal land than any other tribe in the region. Now, I am sure that you believe this will be good for the Menominee Tribe, but it appears to many that this decision will open the floodgates for reservation shopping across the country. Doesn't this decision prove to those in Congress who oppose reservation shopping that we need legislation to crack down on these far flung casino applications?

Response: The IGRA specifies a two-part test in reviewing applications to acquire off-reservation land in trust for gaming. This Secretarial Determination, or two-part determination, permits a tribe to conduct gaming on lands acquired in trust after October 17, 1988, if the Secretary determines 1) that gaming on the land would be in the best interest of the tribe and its members, and 2) not detrimental to the surrounding community. Gaming may occur only if the governor of the state in which the land is located concurs with the Secretary's determination.

In the twenty-five years since the enactment of IGRA, the Secretary has made fourteen two-part determinations and governors have exercised their veto power to preclude gaming in five of those. The applications are rare and considered on a case-by-case basis. Most of the decisions that were approved by governors were relatively close to the tribe's existing reservation, with the exception of the Forest County Potawatomi Community which was 210 miles from its reservation, and the Menominee, which was 160 miles from its reservation. The Department's recent Secretarial Determination for Menominee favorably referenced the Forest County determination. Unlike the Forest County application, the Menominee application analyzed information from a detailed Environmental Impact Statement and a voluminous record. Because IGRA gives the governor authority to decline to concur with a positive two-part determination,, the Department does not believe additional legislation is required.

7. Significant Historic Connection

As you know, most Indian tribes and national and regional Indian organizations are concerned that the Secretary will approve casinos for one tribe in the historic or aboriginal lands of another tribe. I'm sure you will acknowledge that the concern of tribes over the protection of their historic lands against encroachment by other tribes is widely shared in Indian country. In your Secretarial Determination on the Kenosha Casino, you state that an applicant tribe is not required to establish a "significant historic connection" to the land in order for the Secretary to conclude that a proposed casino would be in the best interest of the tribe. However, isn't it also true that Interior's Regulations require every applicant tribe to submit evidence of their historic connection to the area, if they have any? In the case of Kenosha, however, you chose not to decide whether the Menominee Tribe had a significant historic connection as they claim in their application. You chose to do this, I presume, because it is clear that the Menominee Tribe does not have a significant historic connection and the Tribe did not submit evidence of actual occupation, villages or burial sites or any treaty history over the Kenosha area as your regulations require. Instead the Tribe relied on oral history which your prior decisions have clearly held is not adequate. Don't you agree that the Potawatomi Nation does have a significant historic connection to Kenosha and that Potawatomi established that fact in its submissiou to the BIA with treaties, the decisions of the Indian Claims Commission, and evidence of villages and burial sites within Kenosha County? So, given the Potawatomi Nation's overwhelming evidence of a significant historic connection to the land, wouldn't it have been more appropriate for the Secretarial Determination to either clearly state that Menominee has no significant historic connection to the land or to apply the required definition of "significant historic connection" to this evidence rather than simply side-step the issue? It looks to me that the Secretary has decided to ignore the historic connection of tribes to their land. Doesn't this mean "reservation shopping" is allowed, if not encouraged?

Response: In IGRA Congress did not require an analysis of a significant historical connection. However, the Department's regulations at 25 C.F.R. Part 292 incorporate such an analysis into decision-making in certain cases. The discussion in the Menominee Secretarial Determination that an applicant tribe is not required to establish a "significant historical connection" for the two-part determination clarifies the regulatory process, but is not an analysis of the Tribe's submission. In a two-part determination, evidence of a significant historical connection is relevant but not determinative. The Department does not encourage off-reservation gaming applications. Indeed, they are difficult and time consuming, but the law gives the Department the responsibility to consider them and make difficult decisions.

The Potowatomi Nation has broad historical and contemporary connections throughout the Midwest and in Kansas and Oklahoma. In this case, the Department was not considering an application by any of the bands of the Potowatomi Nation, but only of the Menominee Tribe. The Menominee Tribe submitted evidence of a significant historical connection which the Department examined. The evidence included documents indicating that the Menominee Tribe was an original inhabitant of the area around Kenosha. While the regulations state that a significant historical connection is not required to make a determination that the project would be in the best interest of the Tribe, the Department reviewed the tribal history, academic historical research, maps, and other evidence. The decision specifically cites historical documentation submitted by the Menominee Tribe which includes: a written *Overview of the*

Menominee History by the Menominee Indian Tribe; The Mero Complex and the Menominee Tribe: Prospects for a Territorial Ethnicity by David Overstreet, Maps of the Mero Complex and the historic range of the Menominee and *The Traditional Relationship of the Menominee Indian Tribe of Wisconsin to the City of Kenosha and the Southeastern Region of Menominee Country*, by David R.M. Beck. The Department's decision was also based on historical information in the final Environmental Impact Statement.

8. Ignoring Evidence of Detrimental Impact

I am concerned that the BIA does not give fair consideration to the concerns of nearby Indian tribes and surrounding communities in applying the requirements for a Secretarial Determination. I am told that the BIA has never decided that there is a detrimental impact on the surrounding community or a nearby Indian tribe from any off reservation gaming application. Is that correct? Isn't it reasonable for me to conclude therefore, that the BIA simply does not support the provision of IGRA which requires the Secretary to evaluate impact on the surrounding community, because you always conclude there is no detrimental impact. I am sure you disagree, but let me give you an example from Illinois. Over 25 separate letters from Illinois state, local and federal officials expressing concern over the environmental, economic, and social impacts of the proposed Kenosha Casino on the surrounding community within Illinois were submitted to the BIA. Local Illinois officials held their own public hearing on the Kenosha Casino, they have testified before this committee, and they have expressed their concern to all levels of the BIA over the past eight years. You can imagine the surprise of these Illinois officials when your August 23, 2013 Secretarial Determination stated, at 45, fn. 322 "Lake County and Milwaukec County responded after the comment period had run and were therefore not considered." In the Kenosha Secretarial Determination, you simply chose to avoid the evidence of detrimental impact in Illinois by applying a procedural device. The BIA apparently claims it is not obligated to evaluate the obvious detrimental impact on Illinois, despite the fact that the record is undisputed that there is detrimental impact. Don't you understand, then, why many say that the Assistant Secretary of Indian Affairs simply is not fairly applying this provision of the law by ignoring detrimental impacts? This same result occurred in the City and County of Milwaukee where local officials and Congresswoman Moore have tried for many years to insure that the detrimental impacts on the City and County of Milwaukee are properly considered. Isn't it the case that the BIA simply uses bureaucratic devices to avoid giving fair consideration to the detrimental impact once it decides it should grant an application?

Response: As noted in a previous response, the Department is required by Section 20 of IGRA to analyze whether a proposed project would be detrimental to the surrounding community. The Department's regulations implementing Section 20 at 25 C.F.R. Part 292 identify the criteria the Secretary must analyze in order to make such a determination. The Department must follow the requirements in the law and these regulations. The Department considered the views of the City and County of Milwaukee in making its determination. As discussed in the Secretarial Determination, both the City and County of Milwaukee are located within 25 miles of the proposed gaming facility and, thus, the Department was required to consult with them and consider their views. The County and the City presented evidence that the proposed gaming facility in Kenosha would compete with another gaming

facility in Milwaukee. Economic analysis and market analysis suggests that the proposed gaming facility would lead to a competitive impact that might have limited short term economic impacts in their respective communities but market-based competition is not prohibited by the Indian Gaming Regulatory Act. See *Sokaogon Chippewa Community v. Babbitt*, 214 F.3d 941, 947 (7th Cir. 2000).

The determination considered the comments of the local communities at pages 45 through 51 of the decision. Of the 180 comment letters sent out, only Lake County and Milwaukee County failed to submit comments by the deadline in the letter. The two-part determination considered the concerns of Milwaukee County along with the comments of Milwaukee City. On April 30, 2012, the Regional Director responded to the Milwaukee County's letter dated March 28, 2012, requesting to participate in the Consultation Notice process. In its response, the Regional Director explained that his office sent two (2) Consultation Notices to Milwaukee County, and received signed returned receipt cards for both of the Consultation Notices, and that, based on the record the comment time period for Milwaukee County had expired. On June 18, 2012, Milwaukee County provided comments. Because Milwaukee County alleged it had not received any of the consultation letters, the Regional Director included the comments in the record and shared the comments with the Menominee Tribe which responded to the comments by letter dated June 26, 2012.

Lake County, Illinois, is located within 25 miles of the proposed gaming facility, and the Department was required to consult with this county government. The County failed to respond to the Department's consultation letter in the time allotted by our regulations. Therefore the Department did not consider the views of Lake County, Illinois, in making its determination. The Department is bound by the time frames specified in the regulations and believes that fairness requires treating commentators the same with regard to these important procedural rules.

Detrimental impacts to local communities are addressed in the Environmental Impact Statement, along with measures to mitigate those impacts. Additionally, the local communities where the project is located have entered into intergovernmental agreements with the Menominee Tribe to further mitigate possible adverse impacts. To date, we have found no detrimental impact to the surrounding community after the mitigation measures required by the Environmental Impact Statement are considered.

9. DOI Authorizes "Reservation Shopping"

So, on August 23, 2013, the Assistant Secretary issued a Secretarial Determination for a casino on the Wisconsin-Illinois border, located 160 miles from the Menominee Reservation in northern Wisconsin, even though the Menominee Tribe already has a successful casino hotel on its reservation and it has more tribal land than any other tribe in the region. This approval was issued without analyzing the comments submitted by the members of the surrounding community, Milwaukee County or Lake County, Illinois, that will experience extensive detrimental impacts if the Kenosha Casino is opened and without finding that the Menominee have a significant historic connection to the Kenosha land. Now, I am sure that you believe this will be good for the Menominee Tribe, but how does ignoring the requirements of IGRA and your own Part 292 regulations not lead to "reservation shopping" throughout the United States? Doesn't this prove to those in Congress who oppose reservation shopping that we need legislation to crack down on these far flung casino applications?

Response: As discussed in the responses to the previous questions, the IGRA does not limit the locations where gaming facilities may be located and, thus, the Department does not believe that off-reservation land taken into trust is a violation of IGRA. In addition, state governors have authority under IGRA to decline to concur with the Department's positive two-part determination.. The previous gaming acquisition for the Forest County Potawatomi Community provides precedent in Wisconsin for the Menominee's application. The Department's Secretarial Determination, which can be found at www.indianaffairs.gov/cs/groups/public/documents/text/idc1-022944.pdf, contains a lengthy, detailed discussion addressing many of the concerns of the local communities.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN - 6 2014

The Honorable Rob Bishop
Chairman
Subcommittee on Public Lands and Environmental
Regulation
Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to follow-up questions from the oversight hearing on "Citizen and Agency Perspectives on the Federal Lands Recreation Enhancement Act" held on June 18, 2013.

Thank you for the opportunity to provide this material to the Subcommittee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional and Legislative Affairs

Enclosure

Cc: The Honorable Raul Grijalva
Ranking Minority Member
Subcommittee on Public Lands and Environmental
Regulation

Requested Responses on the Record from USDA and DOI
Regarding FLREA Implementation

Question 1. Does your agency/Department charge a standard amenity fee at trailheads or other sites without regard to whether hikers and horse-back riders actually use or plan to use offered amenities?

Response: Section 803 of the Federal Lands Recreation Enhancement Act (FLREA) (PL 108-447) authorizes the charging of standard amenity fees on certain lands under the jurisdiction of the Bureau of Land Management (BLM), the Bureau of Reclamation (Reclamation), and the U.S. Forest Service (Forest Service) that provide significant opportunities for outdoor recreation, have substantial federal investment, allow for fees to be efficiently collected, and provide reasonable access to the required amenities. Standard amenity recreation fee areas generally require six amenities (a permanent toilet facility; a permanent trash receptacle; designated developed parking; an interpretive sign, exhibit, or kiosk; picnic tables; and security services). BLM, BOR and the Forest Service charge standard amenity fees only at areas meeting the requirements of FLREA.

Question 2. Does your agency/Department ever charge a fee for a Special Recreation Permit to hike in wilderness or other backcountry areas?

Response: None of the Department of the Interior (DOI) agencies or the Forest Service charges a fee soley for hiking. FLREA authorizes the issuance of special recreation permits and fees. In certain circumstances, such as when there are capacity, safety, or specialized use issues, fees may be charged for special recreation permits in backcountry or wilderness areas. For example, if capacity limits have been established under a BLM or Forest Service wilderness management plan special recreation permits may be issued or allocated, subject to a fee, either (i) on a first-come, first-served basis, (ii) via a lottery, or (iii) through an advanced reservation program, such as the National Recreation Reservation Service (Recreation.gov). Special recreation permits may also be subject to fee to cover the additional costs associated with recreational activities in wilderness or other backcountry areas (e.g. law enforcement, rescues, health and safety). The BLM and Forest Service also issue Commercial Special Recreation Permits to outfitters and guides using backcountry areas, and in these cases charge fees according to the Commercial Special Recreation Permit regulations and policy for each agency.

Question 3. Does your agency/Department ever charge a standard amenity fee to access any areas that are more than 150 feet from the six amenities that justify the charging of such a fee under FLREA?

Response: Consistent with FLREA, the agencies do not charge standard amenity fees for access. The agencies have not analyzed the distance between amenities within standard amenity fee sites, but the agencies do not use distance as the criterion for determining placement of amenities. Rather, amenities are placed based on the use and needs of the recreating public, with considerations given to site topography and other natural resource concerns.

The Forest Service is aware of concerns about the distance between amenities or the distance between amenities and the designated developed parking area. During a 2011 review of the agency's 97 large standard amenity recreation fee areas, the Forest Service determined that the area designation should be removed from 73 of these areas and that the boundaries for the remaining 24 areas should be substantially reduced. Regions received concurrence from the national office to begin making changes to these areas. Because the public involvement required by FLREA means changes to recreation fees can take a long time, the Forest Service issued direction in May 2012 not to enforce recreation fees in areas that are proposed for elimination from the recreation fee program and to post signs notifying the public of non-enforcement of fees.

Question 4. What is your agency or Department's current policy for tracking visitors at land units?

Response: The BLM requires each Field Office to track the number of recreation visits, visitor days, type of activities, permits issued, recreation site details, and off-highway vehicle designations, and to enter this information into a national database.

The National Park Service (NPS) Public Use Statistics Office relies on field staff to count, record, and report public use. This program of collecting and analyzing monthly public use data is combined with continuous auditing of park counting procedures to ensure consistency and accuracy of the data. Statistics are not available for some areas; for example, those with joint administration of federal and non-federal lands.

Reclamation utilizes vehicle counts, park passes (fees collected), and activity information obtained from visitor use surveys.

The Fish and Wildlife Service (FWS) has a Refuge Annual Performance Plan (RAPP) for tracking the accomplishments and activities (i.e. numbers of visitors) of individual refuges and wetland management districts. These sites use a Standardized Visitor Estimation Handbook to estimate numbers of visitors.

The Forest Service uses National Visitor Use Monitoring (NVUM) to provide science-based estimates of the volume and characteristics of recreation visitation to the National Forest System. NVUM ensures that all visitor statistics for national forests and grasslands produced by the Forest Service use a standardized measure. Each administrative unit gets sampled once every 5 years, so that each year approximately two dozen forests are engaged in NVUM field data collection. Visitation is estimated through a combination of traffic counts and surveys of exiting visitors. Both are obtained from a random sample of locations and days distributed over an entire administrative unit over the course of a year. All of the surveyed recreation visitors are asked about their visit duration, activities, demographics, travel distance, and annual usage. About one-third of respondents are asked a series of questions about satisfaction, including satisfaction with the value received for any recreation fees they paid.

Question 5. In the case of an interagency recreation pass, what is the policy for distributing revenues from such passes both among FLREA agencies and among land units under the jurisdiction of the same agency?

Response: For the Forest Service, interagency pass revenues are retained at the administrative unit where the passes are sold and distributed to the ranger districts based on the estimated revenues from pass sales collected by each district. For the BLM, FWS and Reclamation, 100% of the revenue stays at the office/site where the pass is sold. For the NPS, at parks with total collections under $500,000, 100% is retained at the park where the pass is sold. For parks with collections over $500,000, 80% is retained at the park, and 20% is used for Service wide and non-collecting park projects.

Question 6. Are you aware of any instances in which it seems there is inadequate sharing of FLREA revenues either between units managed by the same agency or between land units managed by different agencies due to statutory constraints under FLREA?

Response: No, we are not aware of such a situation.

Question 7. Have there been complaints in recent years from the public about inconsistencies in Special Recreation Permit fees across agencies or jurisdictions and what are the agencies doing to eliminate such inconsistencies?

Response: Complaints are rare. Among agencies, special recreation permits are governed by separate regulations and policies, including separate fee systems. These statutory, regulatory, and policy constraints limit the degree of consistency in permit fees established by different agencies for similar events and activities, but agencies strive to assess fees that accurately account for use of lands they manage. To the extent possible, agencies attempt to develop fee schedules that are consistent across agencies.

Question 8. Does your agency/Department distinguish between non-profit and for-profit permittees in charging Special Recreation Permit fees?

Response: None of the agencies that issues special recreation permits distinguishes between non-profit and for-profit permittees. Agencies instead distinguish between commercial uses or activities and noncommercial uses or activities in charging special recreation permit fees. Forest Service regulations define commercial uses or activities as those where an entry or participation fee is charged or where the primary purpose is the sale of a good or service, regardless of whether the use or activity is intended to produce a profit. BLM regulations define commercial uses or activities as those for which the permittee offers a duty of care or expectation of safety; charges fees or costs beyond a reasonable sharing of actual expenses; conducts paid public advertising to seek participants; and uses proceeds to pay salaries to employees or owners. Outfitting and guiding and recreation events are examples of commercial activities that are authorized by special recreation permits.

Question 9. FLREA requires advanced, 6-month notice to the public of a new recreation fee. Does your agency interpret FLREA to require the same 6-month notice for an increase in an existing recreation fee? If yes, how and when is notice given?

Response: Under FLREA, for all FLREA agencies, the appropriate Secretary publishes a notice in the Federal Register at least six months before a new fee area is established. For proposed changes to existing fees, the six month notice requirement is not required but agencies use a variety of public processes to ensure public involvement. Depending on the agency and administrative unit, public engagement may include publication of proposed changes in local newspapers and other publications; published requests for public comments; posting of proposed changes on the agency web site and at the affected area; development of a comprehensive stakeholder and public outreach program; submission of changes to a Recreation Resource Advisory Committee (RAC) for review; publication of upcoming RAC meetings in the Federal Register; and briefing of local, state, and Federal delegations on proposed changes. The agencies review and analyze the comments received through these public processes, and changes are approved by agency leadership according to policy. As required under FLREA, notices of changes to existing fees are published in local newspapers and publications near the affected area.

Question 10. Have your agency's RRACs met annually in recent years, as required by FLREA? If not, why not?

Response: While public participation is a vital part of the recreation fee program, the effectiveness and consistency of the RACs have varied. The Recreation RACs have not always met annually due to problems such as lack of fee proposals, delays in the administrative nomination process, and lack of public interest. Three Forest Service Recreation RACs are operational, and two are not. The BLM also utilized these RAC's for fee proposals. Since 2010, it has been difficult to meet USDA standards regarding diversity of membership given the membership requirements in FLREA and the composition of visitors to National Forest System lands. These standards have greatly hindered the Forest Service's ability to pursue candidates who have expressed an interest in serving on Recreation RACs. Continuously expiring charters, expired member appointments, member resignations, and the difficulty of holding timely meetings given the very busy calendars of members have exacerbated the problem. In addition, the narrow scope of the duties of Recreation RACs and the ambiguous requirement of documentation of general public support for Recreation RAC recommendations on proposed fee changes have discouraged some potential candidates.

Question 11. Are you aware of concessionaire fees or policies regarding recreation passes that would be in violation of FLREA if the site were directly managed by the agency instead of a concessionaire?

Response: No, with regard to fees charged by concessioners. FLREA expressly does not apply to concessioners. Concessioners are not required to allow free use to holders of the Annual Pass or local recreation passes. Nevertheless, the Forest Service has endeavored not to allow concessioners to charge fees where the Forest Service could not charge them to minimize confusion on the part of the public.

FLREA does not require a discount on camping fees for holders of the Senior and Access Passes (for senior citizens and those with a disability). Nevertheless, the Forest Service provides a 50 percent discount on camping fees to those pass holders and requires concessioners to do the same. DOI agencies also provide a 50 percent discount on camping fees for holders of the Senior and Access Pass. The majority of campgrounds are managed by the agencies but in a few cases concessioners manage them. In those cases, the agencies encourage concessioners to provide similar discounts for campgrounds they manage. .

Question 12. Why is the Forest Service privatizing so many campgrounds and picnic areas? If these sites are legitimate fee sites under FLREA, then why isn't the Forest Service charging the fees and using that revenue to operate the sites?

Response: Approximately three decades ago, Forest Service personnel operated and maintained most government-owned recreational facilities on National Forest System lands. Consistent with Office of Management and Budget Circular A-76, which requires federal agencies to assess whether activities conducted by the federal government should be performed by private parties, the Forest Service began experimenting with concession operation of its developed recreation sites. Now many campgrounds on National Forest System lands, particularly highly developed sites, are managed by concessioners. The size of the concession campground program has been fairly stable for 10 to 15 years.

During the era of the Recreational Fee Demonstration Program (Fee Demo) authority, which preceded FLREA, the campground concession industry was concerned that the Forest Service would remove sites from the concession program because of the agency's new authority to retain and spend recreation fees under Fee Demo. As a result, for several years, the industry obtained riders to the Forest Service's appropriations authority that prevented the Forest Service from removing sites from the concession program if they were viable for the private sector to operate. Consequently, the Forest Service wrote several letters to field offices prohibiting removal of viable concessions from the concession program.

Concessioners operate under a permit issued by the Forest Service. Removing sites under concession operation would violate the terms of these permits. In addition, it would be difficult for the Forest Service to operate concession sites under current appropriations and staffing.

Question 13. What was the total amount of FLREA recreation fee revenues available for obligation by your agency in FY2012, and what was the total amount of FLREA recreation fee revenue obligated by your agency in FY2012?

Response: The following table provides the information requested in question 13:

FLREA Revenue and Obligations for FY 2012						
	NPS	**BLM**	**BOR**	**FWS**	**USDA FS**	**Totals**
Unobligated Balance brought forward and recoveries for FY 2012	$103,417	$13,253	$323	$4,488	$30,000	$151,481
Total Fees Collected in FY 2012	$179,361	$17,500	$673	$5,000	$66,300	$268,834
Total Funds Available for FY 2012	$282,778	$30,753	$996	$9,488	$96,300	$420,315
Total Funds obligated in FY 2012	$182,513	$17,966	$646	$5,427	$60,800*	$267,352
Unobligated Balance brought forward and recoveries for FY 2013	$100,265	$12,787	$350	$4,061	$35,500	$152,963
Amounts in Thousands						
* The Forest Service tracks expenditure, rather than obligation, of recreation fee revenues.						